

Evaluation of Regulation 1371/2007

Final Report

Report

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Executive Summary

Background

1. Regulation 1371/2007 (hereafter, the Regulation) came into force in December 2009. It defined a number of measures to protect and extend passengers' rights when travelling by rail. In particular, it:
 - requires railway undertakings to provide non-discriminatory access to trains and assistance for disabled persons and persons with reduced mobility;
 - defines rights to compensation in the event of death or injury, or damage to luggage;
 - requires railway undertakings to provide assistance and compensation where a journey is delayed or cancelled;
 - requires railway undertakings to set up a complaint handling mechanism for the rights introduced by the Regulation;
 - requires railway undertakings to publish information on the schedules, fare conditions and accessibility of their services;
 - obliges Member States to establish national enforcement bodies (NEBs), which receive complaints from passengers and enforce the provisions of the Regulation; and
 - extends the existing rights of passengers under the Convention for the International Carriage by Rail (COTIF) from international to domestic transport.
2. Article 36 of the Regulation requires the Commission to report to the Council and Parliament on the implementation of the Regulation by December 2012. In order to inform its report, the Commission has contracted Steer Davies Gleave to undertake an independent evaluation of the implementation of the Regulation, focusing on 17 Member States selected as case studies. This report sets out the results of this evaluation.

Conclusions on the implementation of the Regulation

3. Our review has gathered evidence on the implementation of the Regulation through interviews with stakeholders, supplemented by desk research. Stakeholders included NEBs, railway undertakings, infrastructure managers, and passenger representatives.
4. Overall, we have not identified any single major problem with the implementation of the Regulation, either by Member States or by railway undertakings. There is, for example, no evidence of systematic non-compliance with the Regulation, or a major individual requirement which is so unclear that it cannot be implemented. However, there are issues with several specific requirements and with respect to implementation in some specific Member States and by specific railway undertakings. Overall, many of the objectives defined for the Regulation have only been partially achieved.
5. In particular, the impact the Regulation has had has been limited by derogations adopted by Member States. The Regulation allows Member States to exempt most rail services from most of the provisions of the Regulation, and several have

introduced extensive exemptions. Of the largest Member States, France and the UK have exempted all domestic services; however, Spain and Germany have adopted only limited exemptions and Italy has not adopted any. Overall we estimate that 37% of services (measured in terms of passenger kilometres) have the maximum possible exemption from the Regulation, and 27% have partial exemptions. Although limited evidence is available as to why Member States have adopted exemptions, a key reason appears to be to limit the cost of implementation of the Regulation.

6. However, even where there are derogations, many Member States either have national laws which provide for rights similar to those defined in the Regulation, or they impose similar rights and policies through other means - either through the conditions attached to public service contracts, or policy decisions of the government, which is often the sole shareholder of the national railway undertaking. Therefore, even where services are exempt from the Regulation, rights similar to those defined in the Regulation may still apply.
7. In many Member States, limited actions have been undertaken to enforce the Regulation. In part, this reflects that there have been relatively few complaints, but there have also been limited proactive measures to ensure implementation of the Regulation. Implementation of the Regulation is often reliant on there being one, often State-owned, national railway undertaking that implements the Regulation (or the related provisions of national law) of its own accord. Although this may be sufficient for the current market situation, it may not be sufficient in the future when more rail services may be provided by independent, competing railway undertakings.
8. We have identified the following specific problems with the enforcement system:
 - **Several Member States have not yet complied with the obligation to designate an NEB and introduce sanctions:** Two Member States have not designated NEBs covering all possible infringements of the Regulation, although one is in the process of doing so. Several States either have not defined sanctions in national law, or the sanctions that have been defined do not cover all possible infringements of the Regulation.
 - **Sanctions defined in national law are inadequate:** In several Member States, the maximum level of sanctions is too low to provide railway undertakings with an incentive to implement the Regulation effectively. In some States only conditional or restorative sanctions can be imposed, which is not sufficient to incentivise consistent compliance with all requirements of the Regulation, as not all infringements can be rectified once they have occurred.
 - **Few independent inspections are undertaken:** In around half of Member States, NEBs have not undertaken inspections to verify independently that railway undertakings have implemented the Regulation. In these States, enforcement measures could only be taken in response to passenger complaints, which is inherently more difficult.
 - **Sanctions are rarely imposed for infringements:** To date, only 3 Member States have imposed sanctions for infringements of the Regulation. Although this may be partly because implementation of the Regulation has been relatively good (as discussed further below), in some States it is because the

process to investigate infringements and impose sanctions is not sufficiently developed.

- | **Some NEBs are not sufficiently independent:** Some NEBs are not fully independent of the railway undertakings. In some cases this may have contributed to a reluctance to impose sanctions on railway undertakings.

9. Despite the limited measures that have been taken to enforce the Regulation, we found that most railway undertakings had nonetheless implemented most of its provisions. Neither consumer representatives nor NEBs indicated that there was severe, deliberate or systematic non-compliance with these requirements (except, as discussed below, with the requirement to publish service quality reports).

10. In particular, most railway undertakings had implemented effectively most of the requirements of the Regulation in the two areas which are likely to be most onerous for them:

- | The requirement to provide assistance for disabled passengers and PRMs in booking and using services has in most cases been implemented effectively, and some railway undertakings provide a better service than the Regulation requires; for example many require less than 48 hours advance notification of needs for assistance. However, there are nonetheless some issues with the implementation of this requirement - for example some railway undertakings require passengers to call premium rate phone numbers in order to arrange assistance. In addition, the fact that there is no deadline by when rolling stock and infrastructure must be made accessible is an important limitation.

- | The requirement to provide compensation, rerouting or refunds, and assistance (such as refreshments) to passengers in the event of travel disruption had also been implemented effectively in most respects. Several railway undertakings provide more generous compensation in the event of disruption than the Regulation requires. However, some railway undertakings limit the assistance that they will provide, and issues have arisen as a result of different interpretations of some of these requirements.

11. In contrast, compliance was extremely poor with the requirement to publish service quality reports. Most railway undertakings do not publish these at all, and where they are published, the content of the report is usually not compliant with the Regulation. In addition, at least two of the railway undertakings reviewed for this study do not appear to have contracted sufficient insurance or made other appropriate arrangements to cover their potential liabilities if a major incident occurred. The Regulation does not specify a level of coverage that is required but the level in these States does not seem to be sufficient to meet the requirement for 'adequate' coverage.

12. Our review has also identified some issues with the text of the Regulation, where there can be more than one interpretation of what it requires. The most significant of these issues are:

- | **Force majeure:** It is not clear whether railway undertakings are exempted from any or all of the obligations to provide compensation or assistance in cases of force majeure, and the Regulation appears to be inconsistent with the Annex in this respect. Although the Commission and the majority of NEBs have agreed

a common interpretation, this issue is now subject to a reference to the CJEU. It is also not clear how force majeure should be defined.

- **Missed connections:** Many of the worst delays passengers can experience occur when a delay to one train causes them to miss a connecting train. It is not clear what rights passengers have in these cases, particularly if they had separate tickets for each train.

Recommendations

13. We have made a number of recommendations, covering the following areas:

- exemptions;
- actions to promote awareness of passenger rights;
- actions to improve enforcement;
- service quality reports;
- issues requiring clarification; and
- issues which are not fully covered by the current Regulation.

Exemptions

14. The key factor that has limited the impact that the Regulation has had is the degree to which exemptions have been granted in Member States. While many Member States that have adopted exemptions address the same issues either through national law, or through other means (such as requirements in concession contracts), these provisions are not always the same as the requirements in the Regulation. This flexibility may be necessary in the short term to allow for markets to be aligned to different infrastructure or contractual requirements but does go against the principle of creating a Single European Railway Area, which is at the heart of all Community policy for the sector.

15. Therefore, we recommend that the Commission should consider whether exemptions should still be permitted. Some exemptions are necessary for urban, suburban and regional services, as some of the obligations in the Regulation may not be appropriate for these services, and partial exemptions are necessary for non-EU services. However, it is less clear whether exemptions should be possible for domestic long distance services: these exemptions may cause confusion for passengers and mean there is not a level playing field for operators providing services (not necessarily cross-border services) in a number of Member States.

16. It is also necessary to clarify whether long distance services that cross borders between Member States, but only as far as the first border station, can be exempted from the Regulation; and in what circumstances urban, suburban and regional services that cross borders can be exempted.

Actions to improve awareness of passenger rights

17. Article 29 of the Regulation requires railway undertakings to inform passengers of their rights but it does not specify how they should do this, or specify in detail what information should be provided. In some Member States we have seen that passengers have little awareness of their rights.

18. We recommend that there should be a requirement to display notices, in a prominent position, at rail stations and on board trains, informing passengers about their rights under the Regulation. This would be similar to the requirement

in the equivalent legislation in the air transport sector to provide information on passengers' rights at check-in. Although the exact content of these notices could not be defined at EU level because exemptions mean the obligations are different in each Member State, the Regulation could define minimum requirements for these notices. The Commission and NEBs should also take measures to promote passenger awareness of the rights defined in the Regulation.

Enforcement

19. As discussed above, we have identified several limitations to the enforcement of the Regulation to date. To address these issues, we recommend that:
- The Commission should develop guidelines for how NEBs should carry out their activities, which should include the development of an appropriate procedure to handle complaints, the provision of information to passengers, and (subject to provisions of national law) the circumstances in which sanctions should be considered.
 - NEBs should take a more proactive approach to enforcement, in particular through undertaking inspections to verify implementation of the Regulation.
 - The Commission should encourage NEBs to cooperate and in particular should consider whether the Regulation should be brought within the scope of Regulation 2006/2004 on consumer protection cooperation.
 - The Commission should consider what actions to take where Member States have not complied with the obligations to designate an NEB and define sanctions, or where the NEB is not fully independent from railway undertakings.

Service quality reports

20. As discussed above, although overall compliance with the Regulation has been relatively good, the key exception is the requirement to produce service quality reports. This should be addressed primarily through enforcement - NEBs should verify that the reports are published and that their content is compliant with the Regulation, and take enforcement action if it is not.
21. However, we also recommend some other measures which could be taken to improve implementation of this requirement:
- The Commission has already produced guidance on the procedure for production of service quality reports, and the possible content which would meet the requirements in Annex III of the Regulation. We suggest the Commission should review this guidance to identify if it can be simplified or clarified, and we have suggested some (mostly minor) changes which could be made.
 - Article 28(2) should be amended to make clear that the service quality report should cover all of the items specified in Annex III. In our view this is already reasonably clear but the wording could be subject to other interpretations.

Issues requiring clarification

22. We have identified some elements of the Regulation that could be subject to more than one interpretation and we recommend that these should be clarified. As discussed above, the most significant of these relate to the obligations in Article 16-18 to provide compensation and assistance in cases of travel disruption. We recommend that:

- It should be clarified in what, if any, circumstances railway undertakings are exempted from their obligations to provide compensation or assistance in cases of force majeure. As noted above this issue has been referred to the CJEU to provide an interpretation of the existing text, but ideally it should be explicitly defined in the text of the Regulation. We recommend that there should be exemption in cases of force majeure, but in order to ensure passengers are appropriately protected, the exemption should only be from the obligation to pay monetary compensation.
 - It should be clarified in what, if any, circumstances these rights apply to passengers who are subject to delays due to missed connections. We recommend that the rights defined in these Articles should apply to these passengers but, to reflect the inherently greater risk associated with journeys involving connections and to avoid an excessive economic burden for the industry, the rights should be more limited.
23. We also recommend some other relatively minor changes which would clarify the existing requirements of the Regulation and ensure consistency between the main text of the Regulation and the Annex. We also recommend that the Commission consider how to address some areas where the requirements in the Regulation, whilst not necessarily unclear, are so limited that it is not clear what it was intended to achieve (an example of this is the provision on carriage of bicycles).

Issues not covered by the current Regulation

24. There are a number of issues which are addressed by passenger rights' Regulations in other transport sectors but are not fully addressed by this Regulation. In some cases this reflects objective differences between transport modes, but this is not always the case. We recommend that the Regulation should be extended in the following areas:
- The Regulation only partially defines railway undertakings' liabilities to passengers. To ensure a level playing field, to protect passengers particularly when making international journeys, and to facilitate the operation of cross-border services, we recommend that provisions on railway undertakings' liability should be defined at EU level.
 - The Regulation should also define more specifically the level of insurance that railway undertakings should have to cover these liabilities. This could be defined either in terms of an amount of insurance per passenger, or an amount per incident.
 - The Regulation should prohibit railway undertakings from price discrimination on the basis of place of residence within the EU. Although this is relatively unusual we have identified cases where it does occur.

1 Introduction

Background

- 1.1 In the last decade, the EU has succeeded in liberalising transport markets across its territory. This liberalisation aims to generate benefits for consumers, for example by widening the offer of routes and services, and by stimulating price competition between operators, both within and between modes. As a consequence of more open markets, passengers should be able to choose from a greater range of services and to benefit from lower fares. However, the process of liberalisation and market opening brings about the risk of negative impacts, such as reduced quality of service and divergence in the service standards offered in different Member States.
- 1.2 In order to limit any potential negative impacts on the quality of services, the EU has introduced a number of measures designed to protect passengers across all Member States, and to move towards a uniform set of rights across the territory. Although initially the priority was the air transport sector, similar measures have also now been taken in the rail, maritime and bus/coach sectors.
- 1.3 Regulation 1371/2007 (hereafter, the Regulation) came into force in December 2009. It defined a number of measures to protect and extend passengers' rights when travelling by rail. In particular, it:
- requires railway undertakings to provide non-discriminatory access to trains and assistance for disabled persons and persons with reduced mobility;
 - defines rights to compensation in the event of death or injury, or damage to luggage;
 - requires railway undertakings to provide assistance and compensation where a journey is delayed or cancelled or a connection is missed;
 - requires railway undertakings to set up a complaint handling mechanism for the rights introduced by the Regulation;
 - requires railway undertakings to publish information on the schedules, fare conditions and accessibility of their services;
 - obliges Member States to establish independent bodies which receive complaints from passengers and enforce the provisions of the Regulation; and
 - extends the existing rights of passengers under the Convention for the International Carriage by Rail (COTIF) from international to domestic transport.
- 1.4 However, Member States have the right to derogate from most elements of the Regulation. Urban, suburban and regional services can be permanently exempted from the Regulation, and all other domestic services can be exempted for 5 years, renewable twice. Services which operate a significant portion outside the EU can also be exempted. Therefore, only intra-EU services must be covered by the Regulation.

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The need for this study

- 1.5 Article 36 requires the Commission to report to the European Parliament and Council on the implementation of the Regulation, by December 2012, and this study will provide information to be used in that report.
- 1.6 In particular, the Commission requires analysis of the following issues:
- the extent to which the Regulation has been effectively applied and enforced by Member States; and
 - the effects of the Regulation on rail transport services.

This report

- 1.7 This report is the Final Report for this study. Its purpose is to summarise the findings of the study and set out the main results and conclusions of the analysis. It is based on information gathered from interviews with stakeholders including national enforcement bodies (NEBs), railway undertakings, station managers, and passenger and disability representatives, as well as desk research.

Structure of this report

- 1.8 The rest of this report is structured as follows:
- Section 2 summarises the research methodology.
 - Section 3 sets out the results of the evaluation, divided into three parts:
 - the implementation of the Regulation by Member States;
 - the implementation of the Regulation by railway undertakings and station managers, and the effect on railway services (as well as review of the impact of new entrants); and
 - issues identified with the text of the Regulation itself (for example where it needs clarification).
 - Section 4 summarises initial conclusions and recommendations.
- 1.9 The following information is provided in appendices:
- Appendix A provides a discussion of the policy objectives;
 - Appendix B compares the Regulation against the passenger rights Regulations in other sectors;
 - Appendix C contains the literature review;
 - Appendix D has a list of acronyms; and
 - Appendix E discusses insurance coverage held by railway undertakings.

2 Research methodology

Introduction

2.1 This section provides a summary of the research methodology used. It describes:

- the overall approach used;
- the selection of case studies;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the study, and how they have provided inputs.

Overview of our approach

2.2 The Commission requested us to collect evidence to address a number of questions, most of which can be categorised as either relating to:

- enforcement and complaint handling undertaken by national enforcement bodies (NEBs); and
- application of the Regulation by railway undertakings, station managers, ticket agents and tour operators.

2.3 In order to address these questions, we developed a research methodology divided into two parts:

- case study research; and
- cross-EU interviews and analysis.

2.4 The rationale for this division is that some areas, particularly enforcement and complaint procedures, are specific to Member States and are therefore best evaluated through a State-based, case study approach. It was agreed to undertake case studies in 17 Member States as part of this study; these focus on the areas of implementation which are State-specific, particularly complaint handling and enforcement, exemptions, and other relevant national law.

2.5 Several of the railway undertakings selected for the study operate in multiple States. For example, Thalys operates in France, Belgium, Germany and the Netherlands, and most of the other railway undertakings provide at least some cross-border services. To avoid repetition we have assessed their implementation through cross-EU interviews and analysis. Information from both elements of the research has been used for the conclusions and in the development of recommendations.

2.6 Both the case study and the cross-EU research use a mixture of stakeholder interviews and desk research. The desk research has been useful to supplement the information provided by stakeholders.

Selection of case study States

2.7 The 17 case study states were selected in agreement with the Commission, with reference to the following criteria:

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- the Member States with the largest rail markets (measured by passenger kilometres in 2009 these were France, Germany, UK, Italy, Spain, Poland, Sweden, Belgium and Austria);
- at least some of the Member States that, at the time the study commenced, had not introduced sanctions into national law (such as France);
- Member States in which the structure of the NEB is unusual (for example, in the UK, there are two organisations designated as NEBs for complaint handling);
- States covering a wide geographical scope and variation in sizes.

2.8 The case study states are:

- Austria;
- Belgium;
- Czech Republic;
- Denmark;
- Finland;
- France;
- Germany;
- Hungary;
- Italy;
- Lithuania;
- Netherlands;
- Poland;
- Portugal;
- Romania;
- Spain;
- Sweden; and
- United Kingdom.

2.9 In order to present a thorough analysis of the operation of the Regulation across the EU we conducted a more limited programme of data collection and stakeholder interviews in the other Member States which have rail networks.

Stakeholder selection and inputs

2.10 The stakeholders important for the study were:

- NEBs;
- railway undertakings;
- station managers;
- organisations representing passengers; and
- organisations representing disabled people, and people with reduced mobility (PRM organisations).

2.11 In addition to these, we spoke to cross-EU bodies which represented these organisations at a European level.

National enforcement bodies

- 2.12 We interviewed the NEB(s) notified to the Commission in every case study State, with the exception of Denmark where the NEB requested to respond in writing only.
- 2.13 We requested the following information from each NEB:
- the legal basis for complaint handling and enforcement in the Member State;
 - implementation of the Regulation by railway undertakings;
 - implementation of the Regulation by station managers;
 - any statistics available on the number of complaints and a description of the process for handling them;
 - issues relating to enforcement; and
 - any other issues.
- 2.14 Non-case study states were provided with a shorter question list which focussed on the legal basis for complaint handling and enforcement.
- 2.15 The approach adopted for each case study NEB is listed in Table 2.1, together with the final status of contact as we drafted this Report.

TABLE 2.1 STAKEHOLDER INPUTS: CASE STUDY NEBS

Member State	Organisation	Form of contact
Austria	Schienen-Control GmbH (SCG)	Face-to-face interview
	Schienen-Control Commission (SCK)	Face-to-face interview
Belgium	Directorate General of Land Transport Federal Public Service Mobility and Transport (SPF Mobilité)	Face-to-face interview
Czech Republic	Rail Authority (DUCR - Drazni Urad)	Face-to-face interview
Denmark	Appeal Board for Bus, Train and Metro (ABTM - Ankenævnet for Bus, Tog og Metro)	Written submission + telephone interview
	Danish Rail Regulatory Body (JBN - Jernbanenaevnet)	Written submission + telephone interview
Finland	Finnish Consumer Agency and Ombudsman	Face-to-face interview
	Consumer Disputes Board	Face-to-face interview
	Finnish Transport Safety Agency (TraFi)	Face-to-face interview
France	Directorate General for consumers, competition and repression of frauds (DGCCRF - Direction générale de la concurrence, de la consommation et de la répression des fraudes)	Face-to-face interview
Germany	Federal Railway Authority (EBA)	Face-to-face interview
Hungary	National Transport Authority, Department of Railway Regulation	Face-to-face interview
Italy	Ministry of Transport	Face-to-face interview

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Member State	Organisation	Form of contact
Lithuania	State Consumer Rights Protection Authority (SCRPA)	Face-to-face interview
	Railway Inspectorate	Face-to-face interview
Netherlands	Human Environment and Transport Inspectorate (ILT - Inspectie Leefomgeving en Transport)	Face-to-face interview
Poland	Rail Transport Office (UTK - Urząd Transportu Kolejowego)	Face-to-face interview
Portugal	Institute for Mobility and Land Transport (IMTT - Instituto da Mobilidade e dos Transportes Terrestres)	Face-to-face interview
Romania	The Romanian Railway Authority (AFER)	Face-to-face interview
Spain	Directorate General of Land Transport (DGTT - Dirección General del Transporte Terrestre)	Face-to-face interview
Sweden	Consumer Agency (KV - Konsumentverket)	Face-to-face interview
	Swedish Transport Authority (STA)	Face-to-face interview
	Allmänna Reklamationsnämndens	Face-to-face interview
UK	Office of Rail Regulation (ORR)	Face-to-face interview
	London Travelwatch	Face-to-face interview
	Passenger Focus	Out of scope of study

2.16 We obtained responses from most of the non-case study NEBs, as shown in Table 2.2. We requested written responses from all non-case study NEBs and these were followed up with telephone interviews where necessary for clarification. Of the non-case study States, we were not able to obtain responses from Luxembourg and Slovenia, as they declined to respond.

TABLE 2.2 STAKEHOLDER INPUTS: NON-CASE STUDY NEBS

Member State	Organisation	Form of contact
Bulgaria	Railway Administration Executive Agency	Written submission
Estonia	Consumer Protection Board of Estonia	Written submission
Greece	Regulatory Authority for Railways	Written submission
Ireland	National Transport Authority	Written submission
Latvia	Public Utility Commission of Republic of Latvia	Written submission
Slovak Republic	Ministry of Transport, Construction and Regional Development	Written submission
	Railway Regulatory Authority	Written submission
	Slovak Trade Inspectorate	Written submission

Railway undertakings

- 2.17 We selected 18 railway undertakings for the study. The sample of railway undertakings was designed to include both:
- one railway undertaking with significant operations in each case study State; and
 - a mixture of types of operation (for example, domestic and international, and high speed and conventional).
- 2.18 The responses of the railway undertakings, and the States in which they operate, are shown in Table 2.3.

TABLE 2.3 STAKEHOLDER INPUTS: RAILWAY UNDERTAKINGS

Railway undertaking	Main State(s) of operation	Form of contact
Ceske Drahy (ČD)	Czech Republic	Face-to-face interview
Căile Ferate Române Calatori (CFR Calatori)	Romania	Face-to-face interview
Comboios de Portugal (CP)	Portugal	Face-to-face interview
Danske Statsbaner (DSB)	Denmark	Written submission
Deutsche Bahn (DB)	Germany	Face-to-face interview
Eurostar	Belgium, France, UK	Face-to-face interview
Lietuvos Geležinkeliai (LG)	Lithuania	Face-to-face interview
Magyar Államvasutak Start (MÁV Start)	Hungary	Face-to-face interview
Nederlandse Spoorwegen (NS)	Netherlands	Face-to-face interview
Österreichische Bundesbahnen (ÖBB)	Austria	Face-to-face interview

Railway undertaking	Main State(s) of operation	Form of contact
Polskie Koleje Państwowe Intercity (PKP Intercity)	Poland	Face-to-face interview
RENFE	Spain	Face-to-face interview
Statens Järnvägar (SJ)	Sweden	Face-to-face interview
Société Nationale des Chemins de fer Belges (SNCB)	Belgium	Face-to-face interview
Société Nationale des Chemins de fer français (SNCF)	France	Face-to-face interview
Thalys	Belgium, France, Germany, Netherlands	Face-to-face interview
Trenitalia	Italy	Face-to-face interview
Valtionrautatiet (VR)	Finland	Face-to-face interview

2.19 In addition to the railway undertakings listed above, we also contacted a number of railway undertakings which have recently entered the market, to understand if the implementation of the Regulation had raised particular issues or difficulties for them. The market new entrants we contacted were: Arriva (Denmark, Netherlands), Netinera (Germany), Nordwestbahn (Germany), NTV (Italy), RegioJet (Czech Republic), Veolia (Finland) and Westbahn (Austria). We were able to gather information and views from a subset of these, but not all provided us with responses. In chapter 3, we set out the information that we have been able to gather from the following new entrant operators:

- Arriva;
- NTV; and
- Westbahn

Station managers

2.20 In the case study States, we contacted the station managers. In some cases these are the railway undertakings. The responses of the station managers are shown in Table 2.4.

TABLE 2.4 STAKEHOLDER INPUTS: STATION MANAGERS

Member State	Organisation	Form of contact
Austria	ÖBB-Immobilienmanagement	Written submission
Belgium	Infrabel	Declined to respond
	SNCB-Holding	Face-to-face interview
Czech Republic	ČD	Face-to-face interview
Denmark	DSB	Face-to-face interview
Finland	FTA	Written submission
France	SNCF	Face-to-face interview
Germany	DB Station & Service	Written submission
Hungary	MÁV	Face-to-face interview
Italy	RFI	Face-to-face interview
Lithuania	LG	Face-to-face interview
Netherlands	NS	Face-to-face interview
Poland	Polskie Linie Kolejowe	Written submission
Portugal	REFER	Written submission
Romania	Compania Națională de Cai Ferate	No response obtained
Spain	ADIF	Written submission
Sweden	Jernhusen, Trafikverket	Written submission
United Kingdom	Network Rail	Written submission

Passenger and disability organisations

- 2.21 In each case study State we selected either an organisation representing passengers, or an organisation representing all disabilities and impairments at a national level. We selected disability organisations on the basis of having received useful responses from them for our previous study on Regulation 1107/2006 on the rights of disabled passengers travelling by air.
- 2.22 We also contacted EU-level organisations, including the European Passenger Federation (EPF) and the European Disability Federation (EDF). The responses of these organisations are shown in Table 2.5.
- 2.23 In general, we received a low rate of response from passenger and disability organisations, despite repeated attempts to contact them. Often, these organisations (which may be run on a voluntary basis) have limited resources; as a result, they are not always able to respond to studies such as this. Others do not work in this field: for example, the EU-wide consumer representative association BEUC informed us that it does not currently work on rail transport. Even those that did respond did not all provide detailed information; for example, the Czech

association of consumers did discuss issues with us, but it does not work in the field of rail transport and so the information it could provide was limited.

TABLE 2.5 STAKEHOLDER INPUTS: PASSENGER AND DISABILITY REPRESENTATIVE ORGANISATIONS

State	Organisation	Type of organisation	Form of contact
Austria	Probahn Österreich	Passenger	No response obtained
Belgium	TreinTramBus	Passenger	Written submission
Czech Republic	Czech association of consumers	Passenger	Face-to-face interview
Denmark	Danish Consumer Council	Passenger	Written submission
Finland	Kuluttajavirasto	Passenger	Declined to respond
France	Fédération Nationale des Associations d'Usagers des Transports (FNAUT)	Passenger	Written submission
Germany	VZBV	Passenger	Written submission
Hungary	National Association for Consumer Protection	Passenger	Written submission
Italy	Adiconsum	Passenger	Written submission
Lithuania	Lietuvos vartotojų asociacija	Passenger	No response obtained
Netherlands	ROVER	Passenger	Written submission
Poland	Polish Consumer Federation National Council	Passenger	No response obtained
Portugal	Portuguese Consumer Association	Passenger	Written submission + telephone interview
Romania	Association for Consumers' Protection	Passenger	No response obtained
Spain	FACUA	Passenger	Written submission
Sweden	Swedish Consumers Association	Passenger	No response obtained
United Kingdom	Which?	Passenger	Written submission
EU	BEUC	Passenger	Declined to respond
EU	European Passenger Federation (EPF)	Passenger	Written submission + telephone interview
EU	European Cyclists Federation (ECF)	Passenger	Written submission + telephone interview
Denmark	Danske Handicaporganisationer	Disability	Written submission
Italy	Forum Italiano sulla	Disability	Written submission

State	Organisation	Type of organisation	Form of contact
	Disabilità		
UK	UK Coalition for Disability Rights in Europe	Disability	No response obtained
EU	European Disability Forum	Disability	Written submission + telephone interview
EU	European Blind Union	Disability	No response obtained

Industry associations

2.24 We consulted the major associations representing a number of the bodies discussed above. These are listed in Table 2.6.

TABLE 2.6 STAKEHOLDER INPUTS: INDUSTRY ASSOCIATIONS

Organisation	Full name	Form of contact
CER	Community of European Railway and Infrastructure Companies	Face-to-face interview
EIM	European Rail Infrastructure Managers	Face-to-face interview
ECTAA	European Travel Agents and Tour Operators Association	Written submission
ETTSA	European Technology and Travel Services Association	Written submission
Insurance Europe	Insurance Europe, formerly Comité Européen des Assurances (CEA)	Written submission

Desk research

2.25 The main objectives of the desk research were:

- to evaluate the extent to which railway undertakings demonstrate compliance with the Regulation through information published online, such as Conditions of Carriage and policies on carriage of disabled passengers and PRMs;
- the extent to which railway undertakings have complied with the requirement to develop and publish service quality standards, as specified in Article 28 of the Regulation, and the content of these standards;
- to obtain additional information and to check or clarify points made in interviews (for example, to check specific provisions of national law); and
- to review documentation relating to the Regulation for relevant information, including relevant documents published by the Commission and previous studies in the area.

2.26 Conclusions emerging from the desk research were supplemented by the information collected through stakeholder interviews.

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Railway undertaking websites

2.27 The research methodology employed for this part of the study was based on a review of the websites of the 18 case study railway undertakings listed above.

2.28 The following sources of information were reviewed on each website:

- Conditions of Carriage, which were checked for compliance with the Regulation;
- any policies in areas relevant to the Regulation published elsewhere on the website;
- available methods for notifying carriers of assistance requirements; and
- accessibility of the website for visually impaired users.

Service quality standards

2.29 Again, the research conducted for this part of the study was internet-based. The websites of each of both ERA and the case study railway undertakings were reviewed to check whether they had published service quality standards. We then reviewed what was published for consistency with the Regulation.

Review of relevant legislation and other documentation

2.30 We undertook a literature review of documents which might be relevant to the implementation of the Regulation. This covered:

- other relevant documents published by the Commission, such as passenger rights legislation for other modes (for example Regulation 1370/2007 on public service obligations for road and rail), and Communications; and
- previous economic and legal studies (including the assessment of the costs and benefits of the implementation of Regulation 454/2011 on TAP TSI, the report on insurance of railway undertakings, and the ex post analysis of the implementation of PRM TSI).

3 Results of the evaluation

Introduction

3.1 This section sets out the results of the evaluation. It is divided into the following three parts:

- implementation of the Regulation by Member States (covering exemptions, enforcement, and related provisions of national law);
- implementation of the Regulation by railway undertakings and station managers; and
- issues that have been identified with the Regulation itself (for example issues requiring clarification).

Part 1: Implementation of the Regulation by Member States

3.2 Although the majority of the requirements in the Regulation are imposed on railway undertakings, some requirements, particularly relating to enforcement, are imposed on Member States. Member States also have the option of partially exempting some rail services from the Regulation, and there is nothing to prevent Member States from applying, to domestic services, their own national laws covering the same issues as the Regulation (regardless of whether exemptions are in place or not).

3.3 This part of this section describes how the Regulation has been implemented by Member States. In particular it covers:

- the exemptions from the Regulation in each Member State, and where available, the rationale for these exemptions;
- relevant national legislation, including legislation defining sanctions, and where applicable legislation addressing similar issues to the Regulation;
- the national enforcement bodies (NEBs) and the resources available to them;
- processes for complaint handling and enforcement;
- other activities which have been undertaken by NEBs to implement the Regulation; and
- mechanisms for consumers to claim redress, including alternative dispute resolution mechanisms and simplified court procedures for small claims.

3.4 Of the 17 Member States selected as case studies, we have had sufficient information for all to draft the case studies and summarise results in this section. Of the non case study States, Luxembourg and Slovenia declined to respond and therefore these are not shown.

The scope of the Regulation in each Member State

3.5 Article 2 permits Member States to partially exempt some services from the scope of the Regulation:

- Article 2(4) allows States to exempt domestic services for a period of up to 5 years, renewable twice;
 - Article 2(5) allows States to exempt suburban, urban and regional services; and
 - Article 2(6) allows States to exempt services which run outside the EU for a period of up to 5 years, which may be renewed.
- 3.6 However, Article 2(3) defines that Articles 9 (availability of through tickets), 11 (liability for passengers and baggage), 12 (insurance), 19 (right to transport for persons with reduced mobility), 20(1) (information for passengers with reduced mobility) and 26 (personal security of passengers) shall apply throughout the Community. No exemption is possible from these Articles.
- 3.7 The scope of exemptions that Member States have actually adopted is shown in Table 3.1 below. Where available, the table also shows the legislative instrument or order by which the exemption was defined. Although many Member States have adopted extensive exemptions, often these only apply to regional and suburban services; of the case study States, only the UK, Romania, France have adopted the maximum possible exemption for national long distance services. Bulgaria, Ireland and Latvia have also adopted the maximum possible exemption. The scope of exemptions is much greater for regional and suburban services than for long distance services.
- 3.8 The information in Table 3.1 was provided by the NEBs providing inputs to the study, with the exception of Estonia, where the NEB had recently been appointed and was not yet aware of what the scope of exemptions were. Therefore for Estonia, the table reflects information published by the Commission, which was provided by the Estonian Ministry of Transport on 6 February 2012.

TABLE 3.1 EXEMPTIONS

State	Scope of exemptions by service type			Exemptions defined in
	National long distance	Regional and suburban	Services outside EU	
Austria	None	<p>Maximum possible exemption for urban services¹. For regional and suburban services the following exemptions apply:</p> <p>Article 13 (2) (minimum advance payment in the event of death)</p> <p>Article 16 (reimbursement and re-routing)</p> <p>Article 17 (compensation)</p> <p>Article 18 (2) and (4) (assistance in case of delay)</p> <p>Article 27 (3) (publication of received complaints)</p> <p>Article 28 (service quality standards)</p>	N/A	Federal Law on Regulation 1371/2007 (BGBl. I Nr. 25/2010)
Belgium	Part II of Annex II (information provisions during the journey)	Part II of Annex II (information provisions during the journey)	N/A	By decision of Secretary of State for Mobility
Czech Republic	<p>For 5 years from:</p> <p>Articles 8 and 10 (travel information)</p> <p>Articles 17, 18(2)(a), 18(2)(b) and 18(3) (compensation and assistance during disruption)</p>	<p>For 5 years from:</p> <p>Articles 8 and 10 (travel information)</p> <p>Articles 17, 18(2)(a), 18(2)(b) and 18(3) (compensation and assistance during disruption)</p> <p>Articles 7(2)(b), 17(2)(b), 24(3)(b) and 32 of</p>	None	Section 36a of the Railway Act 266/1994, as amended in 2009

¹ The definitions of urban and suburban services in the Regulation are based on the corresponding definitions in Council Directive 91/440/EEC, which does not distinguish between urban and suburban services. However, Austrian law sets out distinctions between these types of services.

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State	Scope of exemptions by service type			Exemptions defined in
	National long distance	Regional and suburban	Services outside EU	
	Articles 7(2)(b), 17(2)(b), 24(3)(b) and 32 of Annex 1 Annex 2	Annex 1 Annex 2		
Denmark	None	None	None	N/A
Finland	None	Articles 10 (travel information) Articles 17 and 18(2)(a) and (b) (compensation and provision of refreshments/hotel accommodation in cases of disruption) Exemption applies to Helsinki suburban services only	Maximum possible exemption (all conditions have to be agreed with Russian railways)	Section 8A, Finnish Rail Transport Act 2000 (Law 1119/2000), as amended by Law 843/2009
Germany	None	Article 8(2) (provision of information during the journey) Article 18(2)(a) (meals/refreshments in cases of disruption) Article 27(3) (obligation to publish details about complaints) Article 28 (service quality standards) Article 29(1)(1) (provision of information to passengers when selling tickets)	None	Article 1(3) of the Railway Traffic Act (EVO) modified by Article 3(2) of the German passengers' rights law
France	Maximum possible exemption, for 5 years	Maximum possible exemption, permanent	Maximum possible exemption, for 5 years	Article L.2151-1 of the Transport Code
Hungary	Exemption for 5 years from: Articles 10(1), (2) and (4) (travel information and	Maximum possible exemption, permanent	Exemption for 5 years from: Articles 10(1), (2) and (4)	Railway Transport Act CLXXXIII (2005)

State	Scope of exemptions by service type			Exemptions defined in
	National long distance	Regional and suburban	Services outside EU	
	reservation systems) Article 18(2)(a/b) and (5) (meals/refreshments and particular attention for PRMs) Article 21(1) (compliance with PRM TSI) Article 23 (assistance on board) In addition, for services on which no supplement is payable, Articles 8(2) (travel information) and 17 (compensation)		(travel information and reservation systems) Article 18(2)(a/b) and (5) (meals/refreshments and particular attention for PRMs) Article 21(1) (compliance with PRM TSI) Article 23 (assistance on board)	
Italy	None	None	None	N/A
Lithuania	Domestic services exempt from Articles 8 (part 2 and 3), 13, 21, 22, 23, and 24 until 3 December 2014	Domestic services exempt from Articles 8 (part 2 and 3), 13, 21, 22, 23, and 24 until 3 December 2014	Maximum possible exemption	Supplementary act to Railway Transport Code, 22 September 2011
Netherlands	None	None	None	N/A
Poland	Until 4 December 2014 from: Articles 8(2) and (3); 14, 15, 18, 20(2), 21(1) Also from Article 13 and 17, except for certain express train types	Permanent exemption from: Articles 8(2) and (3); 13, 14, 15, 17, 18, 20(2), 21(1), 25	Until 4 December 2014 from: Articles 8(2) and (3); 13, 14, 15, 18, 20(2), 21(1) Also from Article 13 and 17, except for certain express train types	Regulation of the Minister of Infrastructure of 25 May 2011 Regarding Exemptions from the Application of Certain Articles of Regulation (EC)1371/2007
Portugal	Articles 8, 10, 13-17, 18(2), 20(2), 27, 28; Articles 6-14	Articles 8, 10, 13-17, 18(2), 20(2), 27, 28; Articles 6-14 and 32 of Annex I; Annex II and	N/A	Information not provided

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State	Scope of exemptions by service type			Exemptions defined in
	National long distance	Regional and suburban	Services outside EU	
	and 32 of Annex I; Annex II and Annex III	Annex III		
Romania	Maximum possible exemption, for 5 years	Maximum possible exemption, permanent	Maximum possible exemption, for 5 years	Government's Decree (Hotărârea de Guvern - H.G.) number 1476/2009
Spain	Article 27 (complaint handling systems)	Article 10 (travel information systems) Article 21-24 (accessibility and assistance for PRMs), for 5 years	N/A	Agreement of the Council of Ministers of 5 March 2010
Sweden	None	None	None	N/A
United Kingdom	Maximum possible exemption, for 5 years	Maximum possible exemption, for 5 years	N/A	Rail Passengers' Rights and Obligations (Exemption) Regulations 2009 (Statutory Instrument 2009 no. 2970)
Bulgaria	Maximum possible exemption, for 5 years	Maximum possible exemption, for 5 years	Maximum possible exemption, for 5 years	By letter of 8 March 2010 Пв 7.2.3 - 1423/8.03.2010
Estonia	For 5 years from: Articles 8; 10; 13(2); 15-17; 18(2), (4) and (5); 20(2); 21-25	For 5 years from: Articles 8; 10; 13(2); 15-17; 18(2), (4) and (5); 20(2); 21-25	For 5 years from: Articles 8; 10; 13(2); 15-17; 18(2), (4) and (5); 20(2); 21-25	N/A
Greece	For 5 years from: Articles 13, 15-18, 28	For 5 years from: Articles 13, 15-18, 28	For 5 years from: Articles 13, 15-18, 28. Covers service to Turkey, Serbia and other countries via FYROM	N/A
Ireland	Maximum possible exemption	Maximum possible exemption	N/A	S.I. No. 473/2009 – European Communities (Rail Passengers' Rights and Obligations) (Domestic

State	Scope of exemptions by service type			Exemptions defined in
	National long distance	Regional and suburban	Services outside EU	
				Passenger Rail Services) (Exemption) Regulations 2009
Latvia	Maximum possible exemption, for 5 years	Maximum possible exemption, for 5 years	Maximum possible exemption, for 5 years	Carriage by Rail Law Chapter I Section 41 (2)
Slovenia	None	None	None	N/A
Slovak Republic	For 5 years: Articles 8, 13, 15, 17, 18, 21, 22, 23, 25 and 28	For 5 years: Articles 8, 13, 15, 17, 18, 21, 22, 23, 25 and 28	None	Letter from Minister dated 4 September 2009

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- 3.9 To facilitate a simple comparison of exemptions, Figure 3.1 shows the exemptions granted for domestic services. To make any patterns in exemptions easier to identify, the figure only shows States with partial exemptions, not those with no exemptions or the maximum possible exemptions. The graphic shows that there are no very clear patterns to exemptions. However, it does appear that often, Member States will exclude all or almost all Articles from a given chapter. For example, 20 of the 25 States either allow all of Chapter IV (relating to delays, missed connections and cancellations), or exempt at least 8 of the 10 Articles of the chapter. The graphic also shows that there is a particularly high number of exemptions from Article 18(2), on provision of assistance such as refreshments and hotel accommodation, possibly reflecting that this Article imposes relatively significant costs on railway undertakings, and (in contrast to Articles 16 and 17 on compensation and rerouting/reimbursement) railway undertakings rarely appear to have been offering this assistance before.

FIGURE 3.1 PARTIAL EXEMPTIONS FOR DOMESTIC SERVICES

Country	6	7(2)(b)	8(1)	8(2)	8(3)	10(1)	10(2)	10(3)	10(4)	10(5)	13(1)	13(2)	13(3)	14	15	16	17	18(1)	18(2)(a)	18(2)(b)	18(2)(c)	18(3)	18(4)	18(5)	20(2)	21(1)	21(2)	22	23	24(a)	24(b)	24(c)	24(d)	24(e)	25	27(1)	27(2)	27(3)	28	29(1)	29(2)	Annex I	Annex II Part I	Annex II Part II	Annex III				
Austria																																																	
Belgium																																																	
Czech Republic																																																	
Estonia																																																	
Finland																																																	
Germany																																																	
Greece																																																	
Hungary																																																	
Lithuania																																																	
Poland																																																	
Portugal																																																	
Slovak Republic																																																	
Spain																																																	

Only one of urban/suburban/regional services and national long-distance is exempted
 Both types of domestic service are exempted

- 3.10 **Share of services with exemptions**
 We have estimated what proportion of services within each Member State are not exempted, partially exempted and fully exempted. We have based these estimates primarily on UIC data for rail passenger kilometres for each type of service in each Member State.

TABLE 3.2 PROPORTION OF SERVICES EXEMPT (MEASURED IN PASSENGER KILOMETERS)

Member State	Proportion of services with exemption		
	None	Partial	Maximum
Austria	No data available, but there is a significant volume of long distance and cross-border services with no exemptions		
Belgium	14%	86%	0%
Czech Republic	6%	94%	0%
Germany	46%	54%	0%
Denmark	100%	0%	0%
Estonia	2%	98%	0%
Finland	77%	23%	0%
France	8%	0	92%
Hungary	6%	43%	51%
Italy	100%	0%	0%
Lithuania	0%	100%	0%
Netherlands	100%	0%	0%
Poland	2%	98%	0%
Portugal	3%	97%	0%
Romania	2%	0	98%
Spain	2%	98%	0%
Sweden	100%	0%	0%
UK	2%	0%	98%
Bulgaria*	1%	0%	99%
Estonia*	1%	99%	0%
Greece	1%	99%	0%
Ireland*	5%	95%	0%
Luxembourg	100%	0%	0%
Latvia*	1%	0%	99%

Slovenia	100%	0%	0%
Slovakia*	8%	46%	46%
EU-wide	36%	27%	37%

Source: SDG elaborations on UIC data. For States marked with an asterisk, we have made an estimate, but based on limited data.

- 3.11 Overall, measured in terms of passenger kilometres, we have estimated that EU-wide, 36% of all services have no exemptions, 27% have partial exemptions and 37% have full exemptions. EU-wide, we estimate that around 39% of all national long distance services and 17% of all regional and suburban services have no exemptions from the Regulation; these values are likely to be an underestimate as they do not include the values for Sweden or the Netherlands as there is no breakdown between long distance and regional/suburban was available.
- 3.12 The proportion of passenger journeys exempted is likely to be higher than the proportion of passenger kilometres, as regional and suburban services are more likely to be exempt and will tend to be shorter; however, the data available for passenger journeys is more limited and therefore we are not able to calculate this.

Justifications for exemptions

- 3.13 There is no requirement in the Regulation for Member States to justify the exemptions that they adopt. In our interviews with NEBs, we asked what the justification was for exemptions, and where we did not initially get this information, we followed this up with a further request; nonetheless, most did not provide any justification to us.
- 3.14 However, the following explanations were provided:
- Poland: An impact assessment was undertaken in Poland which took into account the financial position of the railway undertakings and information from the railway undertakings on the potential cost of implementation, which was estimated as being very substantial (approximately €830 million). However over 98% of the estimated cost was the cost of new vehicles, and retrofitting old vehicles, to comply with Article 8(2) and (3) regarding provision of information during the journey and Article 21(1) regarding conformance of rail vehicles to the PRM TSI. This indicates that a different interpretation of Article 21(1) was adopted to either our interpretation or the Commission's (this issue is discussed further from paragraph 3.309 below).
 - Belgium: Belgium has adopted a limited exemption, only covering Part II of Annex II (information provision during the journey). This limited exemption was adopted because some SNCB/NMBS rolling stock is quite old and does not have a speaker system in every compartment, and therefore it is not possible to comply with this requirement.
 - Finland: The Regulation could not be applied to the services to/from Russia, as all conditions for these trains require the agreement of Russian railways.
 - Germany: Exemptions have been granted for Article 27(3) and Article 28 because regional services in Germany are operated by a number of small and medium-sized companies, who do not have a specific complaint management

system or publish annual reports; therefore, the publication requirements would result in significantly higher costs for these companies. In addition, there is an exemption from Article 18(2)(a) because the Member State believes that it is not appropriate to provide passengers with drinks or snacks in case of delays to regional services.

- Lithuania: There are temporary national provisions on access for disabled passengers and PRMs which are less extensive than those in the Regulation; the NEB stated that the purpose was to allow a transitional period for the railway undertaking to prepare to meet the requirements of the Regulation.
- Spain: The NEB said the provisions on access for PRMs could not be adopted at present for suburban trains, as most of the rolling stock is not accessible (most regional and long distance rolling stock is accessible however). The provisions on travel information systems will not apply because RENFE's systems are not compatible.

- 3.15 In addition, it was implied in the interviews in Romania and the UK that a reason for granting exemptions was the financial impact that the Regulation would have on railway undertakings. In Romania, this related in particular to the implementation of the PRM TSI, as discussed in more detail below. Ultimately these costs would fall on the Member State, as either the shareholder or (in the UK) the funder of the railway system. Given the potentially significant costs of implementing the Regulation in Member States where national law or the policy of the main railway undertaking did not already include similar provisions, we would expect that the cost implications would have been a key reason in other Member States; however, except as noted above, other States did not explicitly give this as a reason for the exemptions.
- 3.16 The representative association for railway undertakings, CER, has also indicated that the cost of implementing the Regulation was a key reason for Member States to have adopted exemptions. It has said that, with the implementation of the Regulation, railway undertakings would face increasing costs due to reimbursement and compensations in cases of delay or cancellation; it also considers that operators may find it difficult to obtain reimbursement from infrastructure managers when disruptions are due to the infrastructure. As a result, according to CER, some Member States granted extensive exemptions².

National legislation

- 3.17 Article 30 of the Regulation requires Member States to designate national enforcement bodies and that each body shall take the measures necessary to ensure that the rights of passengers are respected. Article 32 requires Member States to define effective, proportionate and dissuasive sanctions in national law. This section describes the provisions related to the implementation of the Regulation which have been introduced into national law; we discuss further below the measures that NEBs have actually taken to ensure that passengers' rights are respected.
- 3.18 This section also describes other national legislation which addresses the same issues as the Regulation. In contrast to the air transport sector, where Member

² CER (2011), *Public service rail transport in the European union: an overview*. Brussels.

States have limited scope to introduce national laws defining passenger rights (due to the freedom to provide air services without restriction defined in Regulation 1008/2008), there is nothing in EU rail sector legislation which prevents Member States from defining passenger rights in national law in relation to domestic rail services, provided that these do not conflict with the Articles that Member States are not permitted to derogate from. As discussed below, some Member States have defined protections for passengers in national law which in some respects go beyond the protections defined by the Regulation. For example, Spanish national law grants compensation of 50% of ticket price for delays over 60 minutes, and 100% for delays over 90 minutes; Belgium (through its contract with the main operator) provides compensation for delays of 100% of the ticket price for delays of more than 60 minutes; these examples exceed the requirements in Article 17. German national law defines a right to travel on alternative services if a suburban or regional train is over 20 minutes late, and allows for travel by other modes of transport if the delay is after midnight or the last train does not operate. Detailed national law provisions are reported in Table 3.3 to Table 3.6 where relevant information is available.

National legislation on infringements and sanctions

- 3.19 Article 32 requires Member States to introduce penalties for infringements of the Regulation. Unless there were already penalties available for similar infringements, or national law had general provisions enabling an authority to impose penalties for breaches of applicable EU Regulations, this would require Member States to make an amendment to national law. In addition, it may also be necessary to amend national law in order to designate a national enforcement body or give it appropriate powers.
- 3.20 Table 3.3 summarises national legislation that has been introduced relating to complaint handling, enforcement and sanctions. As discussed in more detail below, most Member States have complied with the obligation to introduce sanctions into national law, but not all have done so.

TABLE 3.3 NATIONAL LEGISLATION ON ENFORCEMENT AND SANCTIONS

State	National legislation on enforcement and sanctions
Austria	<ul style="list-style-type: none"> ■ The Railway Act (1957) (Eisenbahngesetz - EibG) as amended designates the NEBs and defines when it is possible to impose sanctions
Belgium	<ul style="list-style-type: none"> ■ Law of 30 December 2009 sets out general framework, such as administrative sanctions, the rights of the defendants, and the right to undertake inspections ■ Decree C - 2010/14117 designated the NEB ■ Decree C - 2011/14027 defined administrative sanctions ■ Decree C - 2011/14014 gives civil servants enforcement powers
Czech Republic	<ul style="list-style-type: none"> ■ Railway Act 266/1994, as amended: section 55(3) designates the NEB, section 52(6) lists potential infringements; and section 52(12) specifies fines ■ Code of Administrative Procedure, Act 500/2004, defines process for imposition of fines
Denmark	<ul style="list-style-type: none"> ■ Danish Railway Act (1249/2010), section 22 paragraph 1(7)

State	National legislation on enforcement and sanctions
Finland	<ul style="list-style-type: none"> ■ Paragraphs 86-88 of the Finnish Railway Act (law 304/2011) defines sanctions ■ Finnish Conditional Fine Act defines the process by which such fines can be applied
France	<ul style="list-style-type: none"> ■ Article L.2151-1 of the Transport Code defines exemptions ■ No law designating NEB or defining sanctions
Germany	<ul style="list-style-type: none"> ■ German passengers' right law (Gesetz zur Anpassung eisenbahnrechtlicher Vorschriften an die Verordnung (EG) 1371/2007), published on 26 May 2009, designates the NEB ■ General Railway Act (AEG) Article 5a(9) defines penalties
Hungary	<ul style="list-style-type: none"> ■ Administrative Code (No. CXL./2004) General Rules of Administrative Proceedings and Services defines general enforcement and complaint handling processes ■ Governmental Decree no. 269/2009 defines provisions for complaint handling and enforcement ■ Railway Transport Act CLXXXIII (2005), as amended, defines exemptions
Italy	<ul style="list-style-type: none"> ■ Decree to introduce sanctions and designate the NEB currently progressing through the Italian Parliament
Lithuania	<ul style="list-style-type: none"> ■ Railway Transport Code, Article 33(1) states exemptions and related provisions ■ Lithuanian Administrative Code defines sanctions and the process for imposing them
Netherlands	<ul style="list-style-type: none"> ■ Passenger Transport Act 2000 (Wet personenvervoer), Article 92(2), defines the right for the Minister to impose sanctions ■ General Administrative Law (Algemene wet bestuursrecht) defines process for imposition of sanctions ■ Statsblad 2011-436 appoints ILT as the NEB ■ Statsblad 2012-8845 gave the NEB powers to request information and enforce these requests
Poland	<ul style="list-style-type: none"> ■ Polish Railway Law 2003, as amended, defines infringements and sanctions
Portugal	<ul style="list-style-type: none"> ■ No specific legislation defining sanctions for infringements of this Regulation ■ Decree Law 58/2008 defines sanctions for infringements of national passenger rights legislation, which overlaps with the Regulation but does not cover all elements of it ■ Decree Law 371/2007 defines the administrative procedure through which sanctions can be imposed
Romania	<ul style="list-style-type: none"> ■ Government Decree (Hotărârea de Guvern - H.G.) number 1476/2009 defines sanctions ■ National Law 233/2002 designated the NEB
Spain	<ul style="list-style-type: none"> ■ No specific legislation defining sanctions for infringements of this Regulation ■ Article 89 of Law 39/2003 on the rail sector defines infringements

State	National legislation on enforcement and sanctions
	(including failure to comply with conditions of quality and reliability) - however, the infringements are quite generic. <ul style="list-style-type: none"> ■ Article 91 defines sanctions for these infringements
Sweden	<ul style="list-style-type: none"> ■ Act on Consumer Contracts (Lag om avtalsvillkor i konsumentförhållanden (- SFS 1994:1512) and the Marketing Act (Marknadsföringslagen (- SFS 2008:486) define sanctions process
United Kingdom	<ul style="list-style-type: none"> ■ Rail Passengers' Rights and Obligations Regulations 2010 (Statutory Instrument 2010 no. 1504) designates the NEBs ■ Railways Act (1993) defines sanctions
Bulgaria	<ul style="list-style-type: none"> ■ Decree No 167 of 29 June 2001 established the NEB; role extended to this Regulation by Article 74, paragraph 2 of Ordinance № 43 for rail passengers, luggage and parcels traffic ■ Role as regulatory body and national safety authority defined in Article 7 of the Railway Transport Act (RTA) ■ Law on Administrative Infringements and Penalties defines process for imposing sanctions
Estonia	<ul style="list-style-type: none"> ■ Railway Act, chapter 10 defines sanctions for infringements (although does not refer specifically to this Regulation)
Greece	<ul style="list-style-type: none"> ■ Law 3891/2010, Article 28, paragraph 11 defines role of NEB; Article 33 defines sanctions
Ireland	<ul style="list-style-type: none"> ■ Statutory Instrument 646/2010 – European Communities (Rail Passengers' Rights and Obligations) Regulations 2010
Latvia	<ul style="list-style-type: none"> ■ Law on Regulators of Public Utilities defines role for NEB ■ Latvian Administrative Violations Code defines process to impose sanctions
Slovak Republic	<ul style="list-style-type: none"> ■ Act No. 514/2009 on transport on railroads: Articles 7(4), 8(8) and 37(1)(k) define the role of the NEBs

Sanctions in national law

3.21 Table 3.4 summarises the sanctions which are defined in national law. The table shows that, although most States have complied with the obligation in Article 32 to introduce sanctions, some have not done so or have only done so with respect to breaches of some Articles of the Regulation:

- France has not introduced sanctions into national law, and on the basis of the information we were able to obtain, it appears that there are no immediate plans to do so;
- Italy has also not introduced sanctions into national law to date, although a decree to introduce sanctions is progressing through the Italian Parliament;
- Austria has introduced sanctions into national law but not for all infringements of the Regulation (a new law is also being prepared);
- the Czech Republic only has sanctions in national law for infringements for which no exemption has been granted for domestic services, and therefore an

international operator could not be sanctioned for infringements of other Articles; and

- Romania also has sanctions in national law but not for all infringements of the Regulation.

- 3.22 In addition, in Portugal and Spain, sanctions could only be imposed under national laws which predate the Regulation and therefore do not refer directly to it. In Portugal, the law covers many of the same requirements but not all; in particular, sanctions could not be imposed for failure to provide compensation, refreshments or accommodation in cases of delays and cancellations. In Spain, it is not clear whether the lack of a specific law could cause problems if sanctions were to be imposed because, as explained in more detail below, none have been and therefore the process is untested. The Spanish national law is quite generic and this could be a risk to the imposition of sanctions.
- 3.23 The maximum level of sanctions varies significantly between Member States. Although in some Member States such as Finland or the Netherlands unlimited fines can be imposed, in some States the maximum level of sanctions is very low. This is particularly the case in Lithuania where the maximum sanction is approximately €125. This could be lower than the costs of compliance with the Regulation in some individual cases and therefore it is not clear that this could provide an adequate incentive to comply with the Regulation.
- 3.24 The table also shows whether the sanctions would be imposed through an administrative or a criminal process, and whether they are:
- punitive, meaning they could be imposed for an identified infringement of the Regulation, after the infringement had occurred; or
 - conditional, meaning they could only be imposed if the operator did not rectify an identified infringement when instructed to do so by the NEB.
- 3.25 In most Member States, fines would be imposed through an administrative rather than a criminal process. This is likely to be significantly more effective than a criminal prosecution: analysis of the implementation of Regulation 261/2004 has shown that fines have never been imposed in Member States that require a criminal prosecution, due to the complexity and cost of undertaking this, and the level of proof required. For this Regulation, the only State in which only criminal sanctions can be imposed is Ireland; we understand that it is not possible to have administrative penalties in Ireland due constraints in the Constitution. Belgium and Denmark have both administrative and criminal penalties for infringements of the Regulation although in Belgium the NEB emphasised that the criminal process would never be used.
- 3.26 However, in many States including Germany, Netherlands, Finland and Sweden, national law only allows for conditional fines to be imposed. Although a system of conditional fines is appropriate to address issues of clear policy or procedure that can readily be rectified, such as Conditions of Carriage that are inconsistent with the Regulation, some infringements, by definition, cannot be rectified (for example a failure to provide required PRM assistance) and this is not appropriate to address failure to comply in specific cases. A company could always avoid fines if it complied with the Regulation in a specific case when instructed to do so. We

discuss further below the circumstances in which fines can be imposed in each Member State, and the issues that this raises.

3.27 In Germany, as well as being able to impose fines, the NEB can impose administrative charges on railway undertakings of up to €1,000 where it has found that they have not complied with the Regulation. The purpose of this charge is to cover the NEB's costs. These charges are not fines but they are comparable in level to the fines that can be imposed in some other Member States. Unlike the fines, the administrative charges are not conditional on the railway undertaking failing to rectify the infringement when identified.

TABLE 3.4 SANCTIONS DEFINED IN NATIONAL LAW

State	Nature of sanction	Maximum sanction	Explanation / notes
Austria	Administrative, punitive (but limited scope)	€2,180	Sanctions only available for serious breaches of Articles 18, 19, 20, 22(1) and (3), and 23. New law being drafted expected to increase the maximum sanction and expand their scope, but not clear when it will apply from
Belgium	Administrative, punitive ³	€10,000	Minimum fine €250
Czech Republic	Administrative, punitive	CZK 1 million (€40,000)	Not available for infringements of Articles for which domestic services are exempt
Denmark	Administrative, punitive	DKK 10,000 (€1,330)	Fixed sanction applied in every case of an infringement found by ABTM
	Criminal	Unlimited fine, 4 months prison	For sanctions imposed by JBN. Unlikely to be used as expected ABTM would handle cases.
Finland	Administrative but conditional	Unlimited	Conditional fines only. Depends on nature of infringement and turnover of the company.
France	N/A	None	No sanctions in national law
Germany	Administrative but conditional	€500,000	Sanction has to be withdrawn if the company subsequently rectifies the infringement. Can also impose administrative charge of up to €1,000; this is not a fine but is not conditional.
Hungary	Administrative, punitive	0.2% of income or €370,000	Depends on service type. Can be increased in the event of repeated infringements.
Italy	Administrative, punitive	€100,000 (draft Decree only)	Maximum sanction as defined in draft Decree - none currently in force. €150,000 for infringement of insurance requirements. In addition for PSO services penalties can be imposed for

³ Criminal sanctions are also available in Belgium but NEB reports that they would not be used

State	Nature of sanction	Maximum sanction	Explanation / notes
			failure to meet quality standards.
Lithuania	Administrative, punitive	LTL 300-500 (€75-125)	Total fine per incident - not applicable per passenger
Netherlands	Administrative but conditional	Unlimited	Conditional / restorative fines only for non-compliance with an administrative order. Amount has to be 'reasonable'.
Poland	Administrative; punitive and conditional available	2% of turnover	In addition fines of up to 300% of monthly salary can be imposed on the chief executive of the railway undertaking; and conditional sanctions of up to €5,000 per day.
Portugal	Administrative, punitive	€12,500	Minimum €2,500. Not specifically for infringements of the Regulation.
Romania	Administrative, punitive	RON 20,000 (€4,650)	Depends on infringement. Minimum RON 5,000 (€1,140). Sanctions only available for Articles 9, 11, 12, 19, 20(1), 26
Spain	Administrative, punitive	€30,000	Minimum fine €6,001. For 'very serious' infringements such as failure to have insurance, €30,001-€300,000.
Sweden	Administrative but conditional	Unlimited	Depends on the seriousness of the violation and the annual turnover
United Kingdom	Administrative	10% of turnover	Fines must be 'a reasonable sum', and would be likely to be much lower than the maximum. Fines can only be imposed for infringements of license conditions, and depend on the seriousness of the violation and mitigating or aggravating factors. Conditional fines can be imposed.
Bulgaria	Administrative	BGN 40,000 (€20,450)	Maximum depends on infringement
Estonia	Administrative	€32,000	
Greece	Administrative	€1 million	
Ireland	Criminal	€150,000	Railway undertakings only be prosecuted for failure to comply with an improvement order. Maximum fine €5,000 if a summary conviction (case heard in the district/local court).
Latvia	Administrative	LVL 10,000 (€14,300)	
Slovak Republic	Administrative	€1,000	

National legislation on insurance and liability

3.28 National legislation on insurance and liability is discussed in A.11E, to allow comparison of insurance legislation with values of insurance held by railway undertakings. The Regulation defines some provisions on the liability of railway undertakings for accidents and for loss or damage to luggage; however, although the Regulation defines minimum liability levels for accidents, the circumstances in which railway undertakings are liable are defined in national law. In most Member States, there are provisions in national law which define this liability, but in some (for example the Czech Republic and France) we have not been able to identify any specific provisions in national law.

National legislation on compensation and assistance in cases of disruption

3.29 Some States also have national law which defines requirements on compensation and assistance to passengers in the case of disruption to their journeys, such as delay and cancellation. Table 3.5 summarises these requirements.

3.30 As discussed above, some railway undertakings have also gone further than either national law or the Regulation requires in terms of the policies they have adopted, and therefore the minimum standards defined in law do not necessarily reflect the actual policies applied by operators. In some cases, governments determine undertakings' policy on compensation or assistance without the need for specific provisions in national law, either because the operator is State-owned or the because the government defines conditions in franchise or concession agreements.

TABLE 3.5 COMPENSATION AND ASSISTANCE PROVISIONS IN NATIONAL LAW

State	Requirements	Legislation which defines this
Austria	<ul style="list-style-type: none"> ■ No national law defines these policies, but they have to be approved by the NEB, and it has taken action against several railway undertakings to impose a new compensation policy. It considers its proposal to be in line with the Regulation but ÖBB does not. 	Article 78 (b) (2) of the Railway Act (EisBG)
Belgium	<ul style="list-style-type: none"> ■ No rights defined in national law, but defined in public service contract between SNCB/NMBS and the Belgian State 	N/A
Czech Republic	<ul style="list-style-type: none"> ■ Rights to a refund and a return ticket in the case of delay of over 60 minutes, cancellations and missed connections 	Decree 175/2000
Denmark	<ul style="list-style-type: none"> ■ Operators liable for consequential costs due to delays. Further clarification requested from NEB. 	Danish Railway Act (1249/2010)
Finland	<ul style="list-style-type: none"> ■ Operators liable for costs directly incurred as a result of delays 	Section 21 of the Rail Transport Act
France	<ul style="list-style-type: none"> ■ No national law. However SNCF commercial policy similar in many respects to the Regulation. 	N/A
Germany	<ul style="list-style-type: none"> ■ Regulation applies to long distance services ■ National law defines that on suburban/regional services, passengers can travel via other trains if 	Article 17 EVO

State	Requirements	Legislation which defines this
	<p>the delays is over 20 minutes late, and if it is after midnight or the last train of the day does not operate, by another mode of transport (but with costs limited to €80/passenger)</p> <ul style="list-style-type: none"> █ Defines that passengers do not receive monetary compensation in the event of force majeure 	
Hungary	<ul style="list-style-type: none"> █ No national law - most provisions of the Regulation apply, for long distance services 	N/A
Italy	<ul style="list-style-type: none"> █ Public service contracts with national governments and regions also define quality standards █ Law 911/1935 limited liability for compensation or assistance to the price of the ticket, however this is now superseded by the Regulation 	N/A
Lithuania	<ul style="list-style-type: none"> █ No national laws - Regulation partly applies █ Passengers able to get a refund if they do not travel 	N/A
Netherlands	<ul style="list-style-type: none"> █ National law requires government to define provisions on accessibility in concession contracts. █ Advance notice period for assistance specified in contracts as 3 hours for domestic travel. 	Passenger Transport Act, Article 32
Poland	<ul style="list-style-type: none"> █ No national laws - rights, where available, defined in the Regulation or in Conditions of Carriage of railway undertakings 	N/A
Portugal	<ul style="list-style-type: none"> █ Right to reimbursement if delay more than 1 hour (30 minutes for short distance services) █ No other right to assistance or compensation defined in law 	Decree Law 58/2008
Romania	<ul style="list-style-type: none"> █ Compensation for disruption has to be paid, but no amounts specified 	Government Decree 7/2005
Spain	<ul style="list-style-type: none"> █ Compensation of 50% of ticket price for delays over 60 minutes, 100% for delays over 90 minutes █ Right to rerouting and assistance █ Right to a refund in case of cancellations 	Royal Decree 2387/2004, Article 89
Sweden	<ul style="list-style-type: none"> █ Right also defined to damages for costs directly incurred as a result of delay 	Swedish Rail Carriage Act (1985)
United Kingdom	<ul style="list-style-type: none"> █ Right to compensation of 20% of ticket price in event of delay of 1 hour or more, resulting from cause within railway industry's control █ Right alternative travel and overnight accommodation where necessary 	National conditions of carriage

National legislation on accessibility for PRMs

- 3.31 Some States also have national laws on accessibility, or access and assistance to be provided, for disabled passengers and PRMs. These are summarised in Table 3.6 below. Where there is a national law on this issue, it is often more focussed on the requirement to adapt infrastructure to be accessible without assistance being necessary (for example, in France and Germany), rather than for provision of assistance so that services can be used. In some Member States (for example Spain) there are general rights defined in national law for access to transport but the law is not more specific.
- 3.32 In addition to the laws described below, many States also have a number of laws and guidelines in place which set out requirements on the accessibility of public buildings (for example, in terms of specifications of lifts). These are generic to all public buildings, and not specific to transport infrastructure, and we have therefore not included these in the table below.

TABLE 3.6 ACCESSIBILITY PROVISIONS IN NATIONAL LAW

State	Requirements	Legislation which defines this
Austria	<ul style="list-style-type: none"> ■ Requirement to prevent discrimination against people with disabilities and to enable them to independently participate in society, with specific reference made to provision of transportation services ■ Authorities required to observe guidelines on design of barrier-free infrastructure (wider than just rolling stock and stations) 	<p>Federal Disability Law (BGBl. Nr. 283/1990)</p> <p>Barrier free infrastructure - design guideline (ÖBB 2003/06)</p> <p>Building without barriers - design principles (ÖNORM B1600)</p>
Belgium	<ul style="list-style-type: none"> ■ No rights defined in national law, but defined in public service contract between SNCB/NMBS and the Belgian State 	N/A
Czech Republic	<ul style="list-style-type: none"> ■ Requirements for stations to be accessible ■ All non-TEN infrastructure required to be completed to PRM TSI standards ■ Specifications on platforms and other infrastructure include reference to PRMs ■ Other requirements defined in Regulation 	<p>Decree 398/2009</p> <p>ČSN 73 4959 Platforms and Platform Shelters on Rails National, Regional and Sidings</p> <p>Ministerial Decree No 177/1995 Coll. on Constructional and Technical Code of Rails</p>
Denmark	<ul style="list-style-type: none"> ■ No rights defined in national law, but defined in public service contract between railway undertakings and Ministry of Transport 	N/A
Finland	<ul style="list-style-type: none"> ■ National law sets general legal requirements regarding PRM's and their rights in public transport, but these provisions are aimed mostly at the competent authorities planning transport, 	N/A

State	Requirements	Legislation which defines this
	not the operators.	
France	<ul style="list-style-type: none"> ■ Legislation is focussed on adaption of infrastructure to ensure accessibility, rather than provision of assistance ■ Requirement to adapt stations and rolling stock to be accessible within 10 years ■ Requirement to provide alternative transport services for PRMs when physically impossible to adapt a network 	Law 2005-102 on equal rights and opportunities, participation and citizenship of people with disabilities
Germany	<ul style="list-style-type: none"> ■ Railway undertakings required to provide assistance ■ New build and retrofitted rolling stock and infrastructure have to comply with accessibility requirements ■ Requirement to cooperate with PRM associations to develop programmes for retrofit of rolling stock and stations; programmes have to be submitted to the Ministry and NEB 	German Disability Discrimination Act (BGG) Railway Construction and Operations Act (EBO), Article 2(3)
Hungary	<ul style="list-style-type: none"> ■ Assistance has to be provided ■ Stations have to be made accessible to PRMs when constructed or modernised 	National Act on the Right and Equal Opportunities of PRMs XXVI. (1998) Act 20/2010. (III. 12.
Italy	<ul style="list-style-type: none"> ■ None - the Regulation applies 	N/A
Lithuania	<ul style="list-style-type: none"> ■ National law defines provisions similar to the Regulation with the main exception being it does not require designated points of arrival at stations, or information at unstaffed stations 	Article 33(1), Railway Code
Netherlands	<ul style="list-style-type: none"> ■ Disabled and chronically sick persons must be treated equally on public transport and must not be prevented from access it ■ National law requires that PSO concession contracts define provisions on accessibility ■ Operator required to work with infrastructure manager on implement PRM plan by 2030 	Equal Treatment for disabled or chronically sick people Act 2003, also Decree Accessibility of Public Transport 2011 Article 32, Passenger Transport Act 2000 Franchise agreement
Poland	<ul style="list-style-type: none"> ■ Reference to availability of transport for disabled ■ Limited reference to carriage of PRMs by public transport ■ Discounted travel for PRMs travelling to school or medical facilities ■ Some limited requirements on accessibility - for example provision of ramps and handrails 	Act on Railway Transport of 2003 Transport Law 1984 Discounting journeys by public transport Construction Law of 7 July 1994
Portugal	<ul style="list-style-type: none"> ■ Railway undertakings required to define non-discriminatory access rules ■ Right to assistance on board the train, in the 	Decree Law 58/2008, Article 5

State	Requirements	Legislation which defines this
	<ul style="list-style-type: none"> station, and when embarking and disembarking General obligation to implement measures necessary to meet the needs of PRMs 	
Romania	<ul style="list-style-type: none"> Some references to protections for PRMs but limited/generic: law makes reference to considering the needs of PRMs for infrastructure, rolling stock and vehicle classification 	Government's Decision 877/2010; Annex 2 and 7
Spain	<ul style="list-style-type: none"> General right to access to transport (not specific to rail), stating definitions of basic accessibility which apply Obligation when building infrastructure to meet accessibility conditions Obligations made equivalent to PRM TSI Basic conditions for accessibility of public spaces and buildings 	Royal Decree 1544/2007 Royal Decree 173/2010 Technical Specifications for Homologization (ETH) (2010) Royal Decree 505/2007
Sweden	<ul style="list-style-type: none"> No national law - the Regulation applies 	N/A
United Kingdom	<ul style="list-style-type: none"> Right to assistance for passengers who are disabled or have reduced mobility Obligation for railway undertakings to ensure access to infrastructure (including stations), and to make reasonable adjustments (e.g. accessible timetable information) Rolling stock and infrastructure required to be compliant with PRM TSI by 2020 Obligation (stated in operating license) for station operators to follow accessibility guidelines Obligation (stated in operating license) to produce policy which details information on accessibility levels of stations and rolling stock and services available 	National conditions of carriage Equality Act 2010 Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008 Accessible train and station design for disabled people: a code of practice (2008) Disabled People Protection Policy (DPPP)

Overview of the national enforcement bodies

National enforcement bodies for Regulation 1371/2007

3.33 Table 3.7 lists the NEBs, the nature of the organisation, and where there is more than one NEB in a State, the role of each organisation. The table is divided into case study and non-case study States.

3.34 In most cases the NEB is a State transport or rail regulatory authority. However, in some Member States, the structure of the NEB is unusual:

- Austria:** There are two bodies, one of which is a limited company (albeit State owned) which forms an alternative dispute resolution body and also manages the other, which is an independent administrative court.

- **Denmark:** There are two NEBs in Denmark. In practice, it is expected that almost all complaint handling and enforcement would be undertaken by the Appeal Board for Bus Tram and Metro (ABTM) but the rail regulatory body (JBN) also has enforcement powers.
- **Sweden:** The body responsible for handling complaints, ARN, is an alternative dispute resolution body and is not officially designated as a NEB. The two NEBs only take actions in the collective consumer interest, not on individual complaints.

- 3.35 In several Member States including Finland, Lithuania and the UK, there are separate bodies for consumer complaints handling from enforcement. In the UK, the complaint handling bodies are specific transport-focussed State bodies, with one for journeys to/from London and one for journeys to other parts of the country. Of the case study States, the UK was the only one to have specific transport-focussed consumer bodies with a formal complaint handling role.
- 3.36 The NEB for Italy is not formally designated as yet, because (as discussed above) the decree designating it is still progressing through the Italian Parliament. In addition, for the Slovak Republic, although the NEBs have been designated, they informed us that organisational, personnel and financial arrangements to undertake enforcement had not yet been put in place, and therefore the NEB was not as yet functioning in this role. Some other NEBs were only recently designated and therefore have only recently started to handle complaints (for example, ILT was only designated as the Netherlands NEB in October 2011).

TABLE 3.7 THE NATIONAL ENFORCEMENT BODIES

State	National enforcement body	Nature of organisation	Role
Austria	Schienen-Control GmbH (SCG)	Limited company	Arbitration board and management of SCK
	Schienen-Control Commission (SCK)	Administrative court	Application of sanctions
Belgium	Directorate General of Land Transport Federal Public Service Mobility and Transport (SPF Mobilité)	Ministry	Complaint handling and enforcement
Czech Republic	Rail Authority (DUCR - Drazni Urad)	Rail regulatory authority	Complaint handling and enforcement
Denmark	Appeal Board for Bus, Train and Metro (ABTM - Ankenævnet for Bus, Tog og Metro)	Transport alternative dispute resolution	Complaint handling with some enforcement powers
	Danish Rail Regulatory Body (JBN - Jernbanenaevnet)	Rail regulatory authority	Reserve enforcement powers
Finland	Finnish Consumer Agency and Ombudsman	State consumer agency	Enforcement in collective consumer interest, but not individual cases

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State	National enforcement body	Nature of organisation	Role
	Consumer Disputes Board	ADR body	Consumer complaint handling
	Finnish Transport Safety Agency (TraFi)	State transport authority	Enforcement and complaint handling (business travellers only)
France	Directorate General for consumers, competition and repression of frauds (DGCCRF - Direction générale de la concurrence, de la consommation et de la répression des fraudes)	State consumer and competition authority	Complaint handling and enforcement, for Articles 29-31 only
Germany	Federal Railway Authority (EBA)	Rail regulatory authority	Complaint handling and enforcement
	Regional transport bodies	Usually State transport Ministries	Complaint handling and enforcement (regional services not connected to national network)
Hungary	National Transport Authority, Department of Railway Regulation	Rail regulatory authority	Complaint handling and enforcement
Italy	Ministry of Transport	Ministry	Not formally designated
Lithuania	State Consumer Rights Protection Authority (SCRPA)	State consumer agency	Complaint handling
	Railway Inspectorate	Rail regulatory authority	Enforcement, and technical support to SCRPA
Netherlands	Human Environment and Transport Inspectorate (ILT - Inspectie Leefomgeving en Transport)	Part of Ministry of Infrastructure and Environment	Complaint handling and enforcement
Poland	Rail Transport Office (UTK - Urząd Transportu Kolejowego)	Rail regulatory authority	Complaint handling and enforcement
Portugal	Institute for Mobility and Land Transport (IMTT - Instituto da Mobilidade e dos Transportes Terrestres)	State transport authority	Complaint handling and enforcement
Romania	Romanian Railway Authority (AFER)	Rail regulatory authority	Complaint handling and enforcement
Spain	Directorate General of Land Transport (DGTT - Dirección General del Transporte Terrestre)	Part of Ministry	Complaint handling and enforcement
Sweden	Consumer Agency (KV -	State	Enforcement of Articles

State	National enforcement body	Nature of organisation	Role
	Konsumentverket)	consumer agency	except 10, 12, 21 and 26
	Swedish Transport Authority (STA)	State transport authority	Enforcement of Articles 10, 12, 21 and 26
	Allmänna Reklamationsnämndens	Alternative dispute resolution	Complaint handling. Not designated as an NEB.
United Kingdom	Office of Rail Regulation (ORR)	Rail regulatory authority	Enforcement
	London Travelwatch	Transport consumer body	Complaint handling - journeys to/from London
	Passenger Focus	Rail consumer body	Complaint handling - journeys not to/from London
Bulgaria	Railway Administration Executive Agency (RAEA)	Rail regulatory authority	Complaint handling and enforcement
Estonia	Consumer Protection Board of Estonia	State consumer agency	Complaint handling and enforcement
Greece	Regulatory Authority for Railways	Rail regulatory authority	Complaint handling and enforcement
Ireland	National Transport Authority (NTA)	State transport body	Complaint handling and enforcement
Latvia	Public Utility Commission of Republic of Latvia	General regulatory authority	Complaint handling and enforcement
Slovak Republic	Ministry of Transport, Construction and Regional Development	Ministry	Approves passenger rights and grants exemptions
	Railway Regulatory Authority	Rail regulatory authority	Enforcement
	Slovak Trade Inspectorate	State consumer authority	Complaint handling

3.37 As noted above, most NEBs are rail regulatory authorities or State transport authorities. This has some advantages, in that they are more likely to have the technical expertise necessary to apply the Regulation and may have better contacts with the industry. Where an NEB is the licensing authority for the railway undertaking, it may also be able to influence it without taking formal enforcement

action, and this may be an effective means of resolving some issues. However, rail regulatory bodies or transport authorities may not have access to the same experience on consumer law issues, or have the same expertise in handling consumer complaints, as consumer authorities.

- 3.38 Having the NEB within a wider transport authority also allows it to draw on experiences from passenger rights in other transport sectors in relation to issues that are common across modes (such as passenger information or compensation for delays). This may increase the effectiveness of the NEB by allowing them to use techniques that have been applied in other transport sectors to the rail sector. A further advantage is that the wider transport authorities may already have significant experience in, for example dealing with infringements, complaints or sanctions and can fairly easily apply the same national laws (where they are common across transport modes) to the rail sector. Finally, an established transport authority may already have an established process (a database, published timescales) for handling and processing complaints, this may mean that it is more able to address passenger complaints in a faster and more efficient manner. The disadvantage of having a NEB in a wider body is that rail specific aspects of policy may not be given adequate importance and there may be the need for specific, technical expertise that is not available within a wider institution.
- 3.39 We do not have sufficient data to establish whether a NEB within a wider transport authority is more or less efficient than a standalone NEB. From a resources point of view it may be desirable, although it is not clear how technical matters related to each transport mode could be addressed appropriately, given the specific technical issues in each sector. For example, in the air transport sector, the enforcement bodies that are also civil aviation authorities may draw on aeronautical engineers within the organisation to provide technical advice when needed; it would not be efficient for an NEB that was not a civil aviation authority to employ equivalent technical staff in order to provide occasional advice.

Independence of national enforcement bodies

- 3.40 Article 30(1) requires that the national enforcement body has to be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.
- 3.41 Many NEBs are not fully independent of national governments, and these national governments are also often the only shareholder of the national railway undertaking. For example, in Spain, any decision on imposition of a sanction would ultimately be taken by the Minister of Public Works, who is also responsible for the main railway undertaking. The NEBs for the Netherlands and France are part of the relevant Ministries; and a similar situation will exist in Italy when the decree designating the Ministry as the national enforcement body takes effect.
- 3.42 In some cases (for example the UK Office of Rail Regulation) this potential conflict is addressed by the NEB having an independent board or other structure to ensure its independence. However, these arrangements are not always sufficient: for example, in the Czech Republic, although the NEB is formally independent a railway undertaking could appeal a sanction to the Ministry, which is again the sole shareholder of the main railway undertaking.

- 3.43 Most NEBs are funded directly from the State budget. However, some (including those for the UK, Portugal and Austria) are funded through levies which they impose on railway undertakings and/or infrastructure managers.
- 3.44 Article 30(1) of Directive 2001/14/EC defines equivalent provisions on independence for rail regulatory bodies. Several of these are also the NEBs for this Regulation. Therefore, in evaluating the independence of NEBs, it is important to note that the Commission has initiated infringement proceedings against some Member States for not making their regulatory bodies sufficiently independent of operators, as required by this Article; if this has been infringed then the Regulation will also have been infringed. These infringement proceedings focus on two areas which are of particular relevance here:
- Insufficient independence from the (incumbent) railway undertaking and/or the infrastructure manager (relevant for this analysis in the case of Romania, as the regulatory body is also the NEB); and
 - The regulatory body is part of or subject to the same Ministry that contributes to control of the State-owned railway undertaking (relevant for this analysis in the case of Italy, where the Ministry is currently functioning as the NEB although it is not formally designated).
- 3.45 In the case of the first, an alleged lack of independence of the regulatory body implies that the NEB is also not sufficiently independent. In the case of the second, if the Commission has concerns about the Ministry having direct control of the railway undertaking, then as the NEB is part of the Ministry, it could be considered that the NEB is not independent in decision making terms from the incumbent railway undertaking.
- 3.46 If the NEBs are not sufficiently independent of railway undertakings and infrastructure managers, there is a risk that they would be less likely to impose fines or carry out investigations for breaches of the Regulation. In the course of the research for this study, the only explicit example of concern we found was the Romanian NEB, which informed us that it was keen to avoid imposing fines as this would have a significant impact on the finances of the incumbent operator. However, we cannot exclude the possibility that lack of independence may have limited the activities NEBs have taken in other Member States.
- Resources available and costs***
- 3.47 It is important that the NEBs are adequately resourced to undertake complaint handling and enforcement. In contrast to the equivalent legislation in the air transport sector, for which lack of resources has been reported as a significant issue by NEBs, few NEBs for this legislation reported a lack of resources as being a significant issue. In part this is because, as discussed below, in most Member States there have been few complaints.
- 3.48 Resources available, and issues in individual States, are reported in Table 3.8 below. In most Member States, the staff working on enforcement of this Regulation also undertook enforcement of national laws relating to rail passenger rights. It was generally not possible for them to separately identify the amount of time spent working in relation to complaints handling and enforcement for this Regulation, but where any information was available, it was usually reported that most activity related to national law.

TABLE 3.8 RESOURCES AVAILABLE

State	Resources available (FTEs)	Explanation / notes
Austria	1	1 FTE in SCG; 3 members of SCK who meet 12 times a year
Belgium	1	
Czech Republic	0.5	
Denmark	Negligible (approximately 0.1)	Less than 5% of work for both ABTM and JBN
Finland	0.6	Consumer Ombudsman 0.25 FTE; TraFi 0.1 FTE; Consumer Disputes Board 0.25 FTE
France	N/A	
Germany	30	Covers both Regulation and national law
Hungary	1.1	
Italy	2	Not specifically devoted to this Regulation
Lithuania	0.25	
Netherlands	0.8	
Poland	3.3	
Portugal	6	Less than half time spent on passenger rights and most of this not related to this Regulation (due to exemptions)
Romania	None	Resources minimal - no complaints to date related to the Regulation
Spain	3	Not specifically devoted to this Regulation
Sweden	0.5	KV 0.2 FTE; STA 0.2 FTE; ARN 0.1 FTE
United Kingdom	14	10 at LTW, proportion working on Regulation not known; 4 at ORR but very small proportion work on Regulation.
Bulgaria	2	
Estonia	1	Planned from 2013
Greece	1-1.5	
Ireland	2	Not specifically devoted to this Regulation
Latvia	N/A	Not possible to separate
Slovak Republic	N/A	NEB reported that organisational arrangements not yet set up

3.49 The Terms of Reference for the study ask us to assess the costs of implementation and therefore, we also asked the NEBs about the operating costs that had been incurred. However, few were able to provide any information on this issue, and therefore it is not possible to assess this. Where costs were provided, we give these below; in most Member States costs were low but a key exception is

Germany where there has been a much larger number of complaints and actions taken:

- Netherlands: The NEB stated that complaint handling and enforcement in relation to the Regulation had cost approximately €112,000 including staff costs and overheads.
- Poland: In 2012, the budget for the NEB activities, including overheads, is €160,400.
- Czech Republic: The NEB estimates that its operating costs for NEB activities are around €10,700 per year, including salaries and overheads.
- Greece: Greece estimated that the rail regulatory authority's operating costs associated with its NEB role were €50,000 per year
- Bulgaria: Bulgaria estimated that the costs associated with complaint handling and enforcement were approximately €11,400 (this includes salaries and direct costs but not overheads).
- Sweden: On the basis of information provided by the NEBs on their operating costs, we estimate that complaint handling and enforcement incurs costs of around €32,000 per year.
- Germany: The NEB was not able to provide a breakdown but by allocating its total costs in proportion to its staffing, we estimate that its NEB activities incur costs of around €2.4 million.

3.50 Overall these figures are consistent with total costs EU-wide being approximately €4-5 million, with half of all costs incurred being in Germany. However, several States do not have developed NEBs as yet (for example France), and therefore we would expect costs would be higher once all NEBs are established.

Complaint handling and enforcement statistics

3.51 Approximately 15,000 complaints were received by NEBs in 2011; it is not possible to give a precise number as many NEBs were not able to provide exact figures. NEBs often could not report what proportion of these relate to alleged infringements of the Regulation, as most also enforce domestic passenger rights legislation, and do not make any distinction between these in their statistics (in any case a complaint may not state which legislation was potentially infringed). As explained below, we estimate that the large majority of these complaints did not relate to the Regulation.

3.52 Two thirds of the complaints received EU-wide were received by the UK NEBs. Since the UK has adopted the maximum possible exemption for domestic services, and international services account for approximately 1% of UK rail journeys, it is likely that the vast majority of these complaints did not relate to the Regulation. Taking this into account, and the limited information available from other States, we estimate that only 2,500-3,500 complaints relating to the Regulation were received EU-wide - less than a tenth of the number typically received each year by NEBs for the equivalent legislation in the air transport sector. However, in some cases the number of complaints was low because the NEB had only recently been established.

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- 3.53 Excluding the UK, over half of the complaints were received by the German NEBs. Given the more limited exemptions in Germany, a much higher proportion of these would have related to the Regulation; the NEB believes that the relatively high number of complaints reflects a high level of awareness of passenger rights, rather than non-compliance by the German railway undertakings. This is supported by our analysis of railway undertakings' implementation of the Regulation (discussed below), which indicates that the main German railway undertaking has implemented the Regulation effectively.
- 3.54 In some of the other Member States (for example France), the low number of complaints could be due to the limited awareness of the potential role of the NEB, rather than universal customer satisfaction with the implementation of the Regulation by railway undertakings.
- 3.55 Few sanctions have been imposed. The only sanctions were:
- Denmark: 1 fine of approximately €1,330 imposed
 - Hungary: 6 fines imposed to date (4 in 2011), with a total value of approximately €70,000.
 - Poland: 3 fines have been imposed to date, with a total value of approximately €260,000.
- 3.56 In addition to this, the German NEB has imposed 372 administrative charges on railway undertakings to cover its costs in cases where it found infringements; as noted above, these are not technically fines, but they are of similar value to the fines that can be imposed in some other Member States.

TABLE 3.9 COMPLAINTS AND SANCTIONS

State	Complaints in 2011		Sanctions imposed	Explanation / notes
	Relating to Regulation 1371/2007	All passenger rights issues		
Austria	N/A	659	0	14% of complaints found to be inadmissible, agreed solution found in 81%
Belgium	22	82	0	Remaining complaints referred to railway undertakings or other parties
Czech Republic	6	N/A	0	
Denmark	10	284	1	Total passenger rights complaints figure covers all modes. ABTM only upheld 1 of the 10 complaints.
Finland	0	2	0	Total complaints to CDB to date
France	4	4	0	Total complaints to date
Germany	N/A	2,658	0 (372)	No fines, but 372 administrative charges imposed of up to €1,500
Hungary	103	N/A	4	Also 2 fines imposed in 2010. Total value of fines in 2011 €36,750.

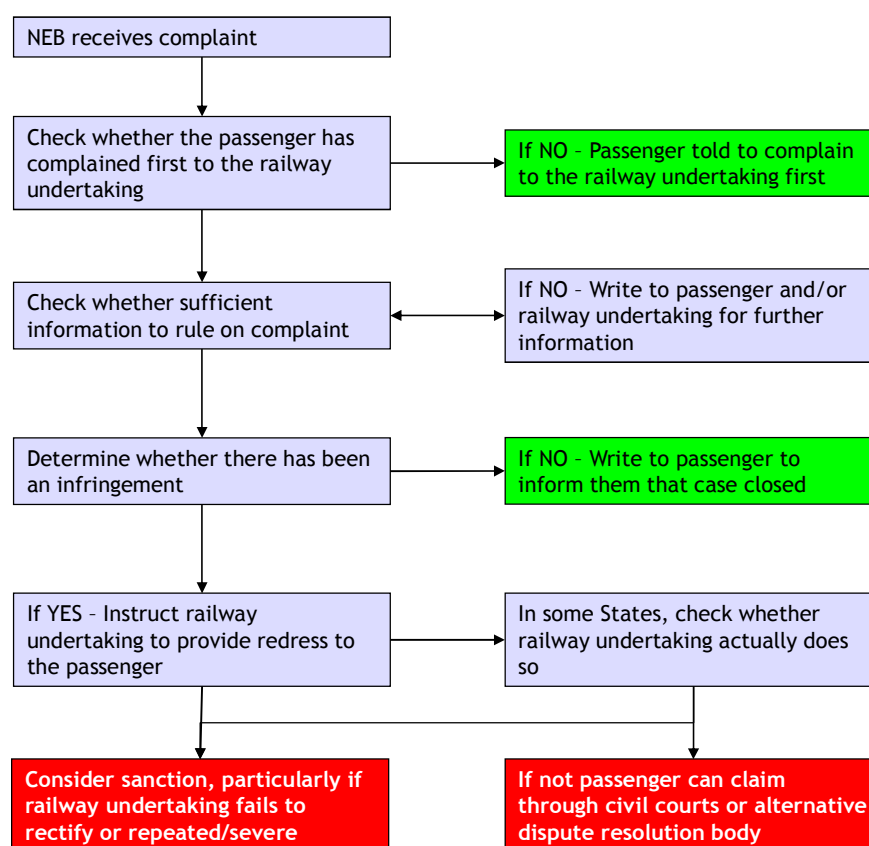
State	Complaints in 2011		Sanctions imposed	Explanation / notes
	Relating to Regulation 1371/2007	All passenger rights issues		
Italy	N/A	N/A	0	No complaints directly from consumers but some from consumer organisations
Lithuania	0	2	0	Number of complaints since NEB designated in October 2011
Netherlands	N/A	N/A	0	No statistics available as NEB only recently created. Expects to receive approximately 100 complaints per year. To date international services account for a disproportionate number of complaints.
Poland	36	N/A	3	Fines issued for infringements of Articles 8(1) and 9(1), further to inspections
Portugal	Few or zero	24	0	Complaint data covers second half of 2011 only. Most not related to Regulation. NEB currently in process of imposing 8 sanctions under Decree Law 58/2008.
Romania	0	4	0	
Spain	N/A	121	0	Most complaints did not relate specifically to the Regulation
Sweden	19	N/A	0	38 complaints to ARN to date
United Kingdom	N/A	10,952	0	Total complaints to LTW and Passenger Focus (includes services and complaint reasons not covered by Regulation)
Bulgaria	4	N/A	0	
Estonia	0	0	0	Until 2011 any complaints would have been handled by the Technical Surveillance Authority
Greece	0	0	0	NEB only established in November 2011, hence no complaints or sanctions as yet
Ireland	N/A	“Minimal”	0	Complaints that have been received not related to the Regulation
Latvia	0	15	0	Complaints were all about delay but due to scope of exemptions did not relate to the Regulation
Slovak Republic	N/A	N/A	0	NEB reported that organisational arrangements not yet established

The complaint handling and enforcement process

Complaint handling process

- 3.57 In most Member States, there have been relatively few complaints and few sanctions. As a result, the processes for handling complaints are less developed than (in particular) for the equivalent legislation in the air transport sector, where most NEBs have well-defined (albeit not always adequately resourced) processes.
- 3.58 Nonetheless, most NEBs have developed a complaint-handling process. The exceptions to this are:
- Italy does not have any such process to date, as the NEB has not been formally designated and it cannot impose sanctions.
 - France also has not have any such process, as the NEB does not have powers in relation to most Articles of the Regulation.
- 3.59 The details of the processes vary between Member States, depending on national legal and administrative procedures, but the processes usually take a form similar to that shown in Figure 3.2 below. In most cases, NEBs check that a passenger has already complained to the company concerned; they then, if necessary, seek additional information from the passenger, railway undertaking or others in order to rule on the complaint; then they make a decision. The process is between the company and the NEB under administrative law, rather than between the company and the passenger under civil law, and therefore even if the NEB finds against the railway undertaking, it cannot necessarily require it to provide redress to the passenger in the specific case. In many Member States, although the NEB could start a process to impose a sanction if its decision is not complied with, if the passenger wished to obtain compensation they would need to claim against the company through the civil courts or (where there is one) an alternative dispute resolution (ADR) process.

FIGURE 3.2 SIMPLIFIED EXAMPLE COMPLAINT HANDLING PROCESS



- 3.60 In some Member States this is complicated by different parts of the process being undertaken by different organisations. For example, in Sweden and Finland, complaints are handled by an ADR body which seeks to determine a solution; this is therefore separate from the enforcement process. Similarly, in Spain, although the passenger may initially complain to the NEB, and only an investigation by the NEB could lead to a sanction being imposed, the NEB refers the case to an ADR if the consumer is claiming compensation from the railway undertaking.

Languages accepted for complaints

- 3.61 For passengers making international journeys who need to complain, a key issue may be whether they can communicate with the NEB in their language or at least another language that they understand. Most NEBs handle complaints in their national languages and also English (Table 3.10 below), but there are some exceptions to this; for example, in Poland, a complaint is only legally valid if it is submitted in Polish, and in France, although the NEB can accept complaints in English by law it has to reply in French.

TABLE 3.10 LANGUAGES FOR COMPLAINTS

State	Languages in which complaints can be handled	Notes
Austria	German or English; French in some individual cases	However complaint form only available in German
Belgium	Dutch, French, German, English	Formally only in Dutch, French and German, but in practice the NEB will also

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State	Languages in which complaints can be handled	Notes
		handle complaints in English
Czech Republic	Czech, Slovak	NEB said that it potentially could also respond to complaints in English
Denmark	Danish, Swedish, Norwegian, Finnish, and English. Replies to complaints in Danish with a summary in English if needed.	Simple complaints can also be written in German.
Finland	CDB: Finnish or Swedish TraFi: Finnish, Swedish or English (but replies only in Swedish or Finnish)	ECC could be used by non-Swedish/Finnish speakers to assist with translation
France	French. Complaints can also be submitted in English.	All responses from the NEB have to be in French, by law
Germany	German, English, French and Italian	Most complaints have been in German with some also in English. German law states that the NEB is only obliged to respond in German, however it can also respond in other languages. At present NEB staff respond in all languages they are able to.
Hungary	Hungarian and officially recognised minority languages (e.g. Bulgarian, Roma etc)	In practice the NEB said that it would also do an unofficial translation for other languages
Italy	Italian, German	No process defined as yet
Lithuania	Complaints can be received in any language. Responses are in Lithuanian, English and Russian	
Netherlands	Dutch or English	
Poland	Polish only	The NEB would help with complaints in other languages but such communications would not be legally valid
Portugal	Portuguese or English	
Romania	Romanian, English, French or German	
Spain	Spanish or English	All complaints to date submitted in Spanish
Sweden	Swedish - may also handle cases in English	To date cases in Swedish. Information on how to complain only in Swedish.
United Kingdom	Any language	Complaints normally received in English. If made in a foreign language, a complaint would be translated and reply given in original language.

Time taken to handle complaints

3.62 As noted above, in most Member States the number of complaints has been low to date. As a result, many NEBs did not have statistics for the average time taken to handle complaints. Where they were able to provide us with figures on the average amount of time taken, this was usually relatively low, but there are some exceptions to this: in Finland any consumer complaint would be handled by the Consumer Disputes Board, an ADR body, which can take up to 14 months to handle claims. Some Member States which were not able to provide figures on average time taken did specify that limits on the time taken were defined in national law (Table 3.11 below).

TABLE 3.11 TIME TAKEN TO HANDLE COMPLAINTS

State	Average time taken	Explanation / notes
Austria	2 weeks	Complex cases take up to 6 months
Belgium	2 weeks	Maximum 1 month, extended by 6 weeks if information has to be collected from another body
Czech Republic	1 month	
Denmark	68 days (2011)	Some complaints take longer (but less than 5% take more than 6 months)
Finland	10-12 months	Complaints to Consumer Disputes Board
France	N/A	NEB seeks to acknowledge complaints within 2 weeks, but no further information available
Germany	2 weeks for initial response then 1 month for company to reply	
Hungary	Maximum 2 months extendable to 3	However calculation of time does not take into account periods when NEB is waiting for responses from the railway undertaking or passenger
Italy	Maximum 90 days	Specified as time limit in the draft decree
Lithuania	13 days	Represents average in 2011 but not just of rail complaints. Maximum 20 days, extendable to 40.
Netherlands	Maximum 8 weeks	For complaints to date
Poland	Maximum 1 month extendable to 3 months	
Portugal	30 days	
Romania	Maximum 45 days	Statutory time limit 30 days, can be extended to 45
Spain	1-3 months	Relatively low time reflects lack of sanctions. The NEB reported that a sanction process would take longer.
Sweden	3-4 months	Up to 6 months for more complex cases
United Kingdom	3 weeks	LTW has target time of 10 working days but usually responds more quickly; railway undertakings permitted up to 20 working days, but usually respond within a week.

Response issued to passengers

- 3.63 All NEBs informed us that they provide passengers with an individual response to their complaints, except in Sweden where the NEB, the Consumer Agency, does not handle individual consumer claims. However, the nature of this response varies significantly between NEBs depending on the extent to which they provide passengers with assistance in claiming redress from the railway undertaking concerned.
- 3.64 In several Member States including Finland, Denmark and Austria, the NEB is in effect an ADR body and therefore it produces a decision on the specific claim that the company concerned should directly comply with (although as discussed further below, the extent to which the decisions of ADR bodies are directly binding on companies varies). In contrast, in Spain, if the complaint related to a financial claim against a railway undertaking, the NEB would tell the passenger to complain to a separate ADR body.

TABLE 3.12 RESPONSE ISSUED TO PASSENGER

State	Response issued to passenger	Assistance provided with redress
Austria	Informal document containing a description of the case, the steps undertaken by the NEB, and the preferred solution	Yes, NEB functions as an alternative dispute resolution body - proposes a preferred solution which becomes binding if both parties accept
Belgium	Complainant informed of outcome of investigation and given a copy of the letter from the railway undertaking	NEB waiting for outcome of pending reference to CJEU before deciding to instruct railway undertakings to pay compensation
Czech Republic	Binding decision	Yes, NEB functions as an alternative dispute resolution body and decisions are binding
Denmark	ABTM issues a formal decision which the operator is required to comply with	Yes, ABTM functions as an alternative dispute resolution body
Finland	TraFi: letters sent to inform passengers of outcome CDB: written statement of its decision	Yes, CDB functions as alternative dispute resolution body
France	No information provided	No information provided
Germany	Decision provided, with a detailed justification and information on any action taken	No: NEB does not assist with individual claims although fines may be imposed if the railway undertaking does not comply
Hungary	Legal document issued explaining decision and reasoning	No: Complaints could lead to sanctions, but NEB does not assist
Italy	Draft decree specifies that NEB would have to notify passengers of progress with their complaints	Not clear yet
Lithuania	Letter issued stating outcome of the case, including evidence and what Articles if any infringed	Yes: SCPRA functions as an alternative dispute resolution body, and a fine may be imposed if the railway undertaking

State	Response issued to passenger	Assistance provided with redress
		does not comply with its decision
Netherlands	Decision states whether a violation has occurred and what undertaking should do	Yes: Decision could be used by passenger in a court action, and a restorative fine could also be imposed
Poland	NEB informs passenger whether complaint to be investigated. If it is, a decision is issued to both the passenger and railway undertaking	Limited: NEB will investigate individual claims, and if an infringement is found the operator will have to refund the passenger, but focus is on enforcement rather than assistance with claims
Portugal	Passengers informed of outcome by official letter or email	Yes: Railway undertaking given opportunity to address problem and a sanction may be imposed if it does not
Romania	Passenger and company informed by NEB of the outcome of the case	Yes: If appropriate AFER instructs the company to pay compensation
Spain	Individual response provided	Not by NEB: Passenger advised to complain to Transport Arbitration Board (ADR) body if they wish to claim redress
Sweden	ARN (but not NEB) makes a decision in the form of a non-binding recommendation, which is communicated to all parties	Not by NEB: ARN functions as an alternative dispute resolution body, but it is not a designated NEB
United Kingdom	Non-binding written response outlines complaint, operator's response, outcome, and any relevant legislation. Includes copy of National Rail Conditions of Carriage, where appropriate.	No

Policy on imposition of sanctions

- 3.65 As noted above, most but not all Member States have introduced sanctions into national law. Where sanctions exist, the circumstances in which they could be imposed differs between States; this can either be due to differences in national law, or differences in policy between NEBs.
- 3.66 In Denmark, national law requires the NEB to impose a sanction in every case that it finds an infringement by the railway undertaking; there is no discretion but the level of the sanction is relatively low. In Romania, national law also states that a sanction has to be imposed in every case that an infringement is identified by the NEB (for those Articles for which sanctions are possible), but in practice this would not happen; the NEB is concerned that sanctions would aggravate the national railway undertaking's critical financial situation and therefore it has not imposed any. In some other Member States including Belgium and Spain, the NEB has discretion whether to impose a sanction in an individual case.
- 3.67 As discussed above, in several States including Finland, Germany and the Netherlands only conditional sanctions can be applied under national law, meaning that sanctions would only be imposed if the undertaking concerned failed to correct an infringement when instructed to do so by the NEB. There is also no

requirement on the NEB to impose a sanction and the NEB would consider the specific characteristics of the case. In practice, it will often be difficult to impose a conditional sanction for a one-off infringement of the Regulation, because it may not be possible to rectify an infringement after it has occurred. For example, if a railway undertaking failed to provide PRM assistance for a particular journey as required, meaning the passenger concerned could not make the journey, this cannot be rectified. A conditional sanction could only be imposed if the NEB found that the general policies or practices of the railway undertaking were inadequate and had to be changed, but this is difficult to prove.

TABLE 3.13 POLICY ON IMPOSITION OF SANCTIONS

State	Circumstances in which sanctions imposed	Explanation / notes
Austria	Limited scope to impose sanctions	New law on sanctions being prepared which will expand their scope
Belgium	NEB prefers to promote dialogue rather than impose sanctions.	NEB has only recently (December 2011) been given the power to impose sanctions.
Czech Republic	NEB required to impose a sanction in every case where an infringement identified	
Denmark	ABTM imposes an administrative fine in every case of an infringement JBN would consider criminal prosecution if a decision not complied with	
Finland	CO: Considers if case significant, flagrant, repeated, in danger of spreading, or cause a requirement for deterrent TraFi: Required to consider if breach proven and operator has not agreed to its recommendations	CO can only impose conditional fines
France	No sanctions available in national law	
Germany	NEB can impose sanctions if the company does not comply with its decision in a case	EBA can only impose conditional fines. But administrative charge may also be applied.
Hungary	NEB considers if the violation was an isolated incident or if it impacts a large number of passengers	
Italy	Criteria include the seriousness of the breach; whether the operator has consistently not complied; and the level of harm	Criteria defined in draft decree - not yet in force
Lithuania	NEB required to impose a sanction whenever an infringement identified	Amount can vary depending on seriousness
Netherlands	No policy defined as yet, but NEB would seek first to negotiate with company. Sanction could only be imposed for non-compliance with an order.	

State	Circumstances in which sanctions imposed	Explanation / notes
Poland	At discretion of President of UTK	
Portugal	Sanction would not be imposed if undertaking rectified issue when promoted by the NEB	This refers to sanctions under Decree Law 58/2008. Process for the Regulation not yet defined but expected to be equivalent.
Romania	In theory sanctions should always be imposed when an infringement identified but this does not happen	NEB concerned that sanctions would aggravate the critical financial situation of the railway undertaking
Spain	No obligation to impose sanctions if infringement identified	Has not occurred to date
Sweden	Significant, flagrant or repeated infringements	Can only impose conditional fines
United Kingdom	Sanctions imposed for systemic issues, take into account seriousness of the offence and any mitigating or aggravating factors	Stated ORR policy. Fines can be imposed both conditionally and directly.

Process to impose sanctions

- 3.68 In most Member States, sanctions would be imposed by the NEB itself, through an administrative process. However, there are some exceptions to this:
- **Austria:** Sanctions can only be imposed by a district administrative court, further to the case being referred by the NEB.
 - **Belgium:** Although the NEB can impose sanctions itself, it could only do this after the public prosecutor had decided not to pursue a criminal prosecution in the case. The prosecutor has 90 days to make this decision and therefore this adds to the amount of time the process takes, and could be a risk to the NEB's ability to impose a sanction at all, because the process to impose a sanction has to start within one year of the infringement.
 - **Spain:** The NEB itself could not impose a sanction, but would refer the case to the representative of the national government in the province concerned (Delegación del Gobierno), which would investigate and if it believed it appropriate to impose a sanction, would refer the case back to the Ministry of Public Works, with the ultimate decision being taken by either the Secretary of State or Minister.
 - **Finland:** Any sanction would ultimately be imposed by the Market Court. As noted above any sanction would also be conditional.
 - **Ireland:** Sanctions can only be imposed for non-compliance with an improvement notice. These sanctions would be imposed through a criminal prosecution process.
- 3.69 The fact that no sanctions have been imposed as yet, in most Member States, means that the processes for imposing sanctions have not been tested. Therefore, it cannot be excluded that there might be administrative or legal difficulties with

the imposition of sanctions which have not come to light as yet. It is therefore too early to draw any conclusions as to whether the sanction process is effective.

Imposition of sanctions on railway undertakings not based within the State

- 3.70 In the air transport sector, some States have faced administrative or legal difficulties in imposing sanctions on operators which are based within a different Member State. In the rail sector, we were not informed of any attempts to impose sanctions on railway undertakings based in different Member States, and therefore it was not clear whether this would be a problem. This is mostly because few sanctions have been imposed and therefore, the process is untested.
- 3.71 A further issue is that, in many Member States (for example Portugal and the UK), most or all international rail services are currently operated either by a national railway undertaking, or jointly between the national railway undertaking and the railway undertaking of the neighbouring State. Some international service 'brands' are actually not railway undertakings but co-operations between railway undertakings in neighbouring States (for example, Thalys and Elipsos). Therefore, at present it would always be possible to impose a sanction on the national railway undertaking, and so NEBs could not envisage any administrative or legal problems with the imposition of sanctions.
- 3.72 However, in the future, particularly in the event of further liberalisation of the rail market, international services may be operated by competing international railway undertakings without any cooperation with a national railway undertaking; for example, Trenitalia operates an overnight service to Paris without cooperation from SNCF, and DB is reported to be considering operating trains from Cologne to London. In this case, it is less clear that the current procedures to impose sanctions will be sufficient.
- 3.73 Therefore it was not clear whether this could be a problem, particularly if in the future there are a larger number of international rail services provided by competing operators. However, some NEBs did report that this could prove problematic:
- **Spain:** Although the main long distance international trains are operated jointly by RENFE and SNCF or CP, in addition to these trains operated by SNCF and CP cross the border into Spain. The NEB said that the law would not prevent it imposing a sanction on SNCF or CP, or any other international operator, but at this stage it was not clear how it would enforce payment of any such sanction.
 - **Austria:** It is possible to impose sanctions on companies that do not have an Austrian license but the NEB reported that the process was more complex.
 - **Poland:** The NEB said that it could not impose sanctions on operators from other countries.
- 3.74 In addition, many of the problems with imposing sanctions on non-national carriers in the aviation sector are caused by the carrier not having a representative in the State. Several NEBs informed us that to obtain a license for operating in their State, non-national carriers would be required to have a representative, and this would reduce at least some of the difficulties.

Collection of sanctions

- 3.75 As almost no sanctions have been imposed, it is not clear whether collection of sanctions is likely to prove a problem. We were informed that the fine issued in Denmark was paid but the fines issued in Poland have not been, as they are still being appealed.

Other activities undertaken by NEBs**Reviews of compliance**

- 3.76 Some NEBs have undertaken inspections of railway undertakings in order to verify whether they are complying with the Regulation, and in a few cases, issues have been identified as a result. In most cases these have not led to sanctions although some of the sanctions which have been imposed in Hungary did result from inspections undertaken by the NEB. There is significant variation in the number of inspections, with 911 inspections undertaken in Germany in 2011, but none undertaken in some other large Member States.
- 3.77 Some NEBs had also undertaken other measures to encourage compliance with the Regulation, such as reviews of Conditions of Carriage to ensure that these are compliant with the Regulation, or informal meetings with railway undertakings. Some NEBs also have other consumer protection responsibilities, not relating to the Regulation, which have led them to undertake other checks - for example, the French NEB also enforces legislation on unfair contract terms and unfair commercial practices, and in this context has checked whether discounted fares offered by SNCF are actually available.
- 3.78 In Austria, the NEB also has the power under national law to approve the compensation policies of railway undertakings, and it has made a decision about the policies they must adopt. Its interpretation is currently being challenged by the main national railway undertaking (ÖBB) in a case referred to the CJEU.

TABLE 3.14 INSPECTIONS AND OTHER ACTIVITIES

State	Inspections undertaken in 2011	Explanation / notes
Austria	No on-site inspections, but review of Conditions of Carriage and compensation policies	NEB does not have the power to undertake on-site inspections
Belgium	None	NEB expects to start undertaking inspections in 2012. Has also had meetings with railway undertakings and checked website, Conditions of Carriage, etc.
Czech Republic	One inspection undertaken of ČD headquarters, focussed on regulations for implementing passenger rights	Inspections also undertaken to verify compliance with quality standards in public service contracts (not related to the Regulation)
Denmark	None	However JBN is currently reviewing railway undertakings' service quality reports and quality management systems
Finland	None	However when new infrastructure introduced TraFi inspects it for

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State	Inspections undertaken in 2011	Explanation / notes
		compliance with PRM accessibility rules
France	None	Inspection programme planned for summer 2012. NEB has also checked availability of discounted fares and information provided by SNCF.
Germany	911 inspections undertaken in 2011, relating to stations, rolling stock, travel centres, customer services centres, and ticket sales channels	Some problems identified with the application of the Regulation as a result of inspections, and as a result, changes made by the companies
Hungary	375 inspections carried out since 2009. Mostly on-site but also covered the availability of tickets, quality management systems, etc.	Fines previously issued as a result of issues identified in inspections.
Italy	None	Some meetings undertaken with operators to encourage compliance
Lithuania	One inspection undertaken, of information provided on trains and at stations	NEB only designated in October 2011; considering what inspections to undertake in 2012
Netherlands	To date has inspected 75 stations for PRM accessibility, information systems and other aspects not related to the Regulation	Inspection programme only recently defined. Considering reviewing crowding and complaint handling in the future.
Poland	457 investigations undertaken in 2011 of which proceedings to impose sanctions commenced in 5 cases	NEB has also undertaken measures to promote awareness of passenger rights in Poland
Portugal	Inspections have been undertaken although not specifically related to the Regulation.	Railway undertakings are also required to submit Conditions of Carriage for approval by NEB; however, this checks for consistency with national law not the Regulation
Romania	Annual inspection programme, covering compliance on board trains and at stations. But no details of number of inspections available	Inspections not limited to compliance with this Regulation
Spain	128 inspections undertaken, but not just related to the Regulation.	The NEB has also checked RENFE's Conditions of Carriage.
Sweden	No inspections to date	The NEBs reported that there could be inspections in the future
United Kingdom	No inspections to date	ORR relies on complaints handling NEBs to signal any evidence of systemic or significant problems. ORR also monitors passenger satisfaction survey results for issues

Cooperation with other organisations

- 3.79 Article 31 requires NEBs to cooperate, through exchanging information on their work and practices, although there is no obligation on them to forward complaints. We requested information on this cooperation from NEBs, as set out in Table 3.15.
- 3.80 In general there has been limited contact between NEBs, despite the obligation in the Regulation. Of the 17 case study States, the NEBs of 7 States had had no contact with other NEBs, and for a further 6 NEBs any contact has been limited.
- 3.81 As a relatively small proportion of rail travel is international (6% across the EU⁴), cooperation between NEBs for the purpose of resolving cases is less important in rail travel than in travel by air. The purpose of cooperation between NEBs under the Regulation is therefore primarily to ensure consistency of application across Member States. However, a limited number of NEBs have collaborated for this purpose: only the Belgian, Dutch and Hungarian NEBs informed us of collaboration specifically to share interpretations and working methods.

TABLE 3.15 COOPERATION BETWEEN NEBS AND WITH OTHER ORGANISATIONS

State	Cooperation with other NEBs	Cooperation with other organisations
Austria	Occasional contact with German NEB	Contact with German arbitration board and French consumer body (FNAUT): collaboration was possible with the German arbitration board but not FNAUT
Belgium	Informal meetings with Dutch, French, German and Luxembourgish NEBs, to discuss working methods, statistics and interpretation.	No contact with PRM organisations
Czech Republic	No contact with other NEBs	No information provided
Denmark	No contact with other NEBs	ABTM and JBN (NEBs) communicate with each other
Finland	No contact with other NEBs (although the NEBs noted that there are no rail services between Finland and other Member States)	No information provided
France	Some contacts with UK NEB to handle claims.	Strong and regular contacts with consumer associations. No established contacts with PRM organisations.
Germany	Contacts with NEBs for States bordering Germany (including Austria, Belgium and the Netherlands)	Some collaboration with SÖP (ADR body) to clarify cases; further collaboration restricted by data protection rules.
Hungary	Cooperation with NEBs within the NEB Rail Working Group to share interpretations, in particular with	No information provided

⁴ Eurostat, table rail_pa_typepkm, 2009

State	Cooperation with other NEBs	Cooperation with other organisations
	Dutch, Belgian, and Polish NEBs	
Italy	Provisional NEB has had limited contact with other NEBs (e.g. in development of European complaint form)	No information provided
Lithuania	No cooperation with other NEBs (although no rail services between Lithuania and other Member States)	No information provided
Netherlands	Discussions of cases and interpretations of the Regulation with other NEBs (particularly with the German and Belgian NEBs). Comparisons of sanctions regimes with Belgian NEB to minimise 'forum shopping'.	No information provided
Poland	No cooperation with other NEBs	No information provided
Portugal	Almost no cooperation with other NEBs, except for an information request from the Dutch NEB	No information provided
Romania	No cooperation with other NEBs	No information provided
Spain	No cooperation with other NEBs	Cooperation with Junta Arbitral de Transporte and the Delegaciones del Gobierno
Sweden	Only at EU-wide NEB meetings. Historic cooperation with Danish / Norwegian NEBs has been good.	No information provided
United Kingdom	Limited interactions between LTW and the German NEB. ORR has referred a case to the French NEB. French NEB forwarded one complaint to ORR, who passed to LTW.	ORR, LTW and Passenger Focus have regular interactions LTW has also had some limited interaction with the European Passenger Federation

Alternative dispute resolution mechanisms

- 3.82 Most Member States have alternative dispute resolution (ADR) processes which provide consumers with a simple means for resolving complaints about rail operators; of the case study States, only Romania has no ADR body handling complaints in the rail sector, although in Italy the ADR body cannot handle complaints about all rail services. In some Member States the NEB functions as an ADR process as well as an enforcement body, but in others it is a separate body.
- 3.83 In most Member States, ADR services are free for consumers to use, although in Denmark and the Netherlands, there are nominal charges of €16 and €25 respectively (in Denmark, the ADR is also the NEB, meaning that there is a charge to make complaints to the NEB). In contrast to the air transport sector, rail operators have generally not sought to resist the development of these processes,

and we were informed by stakeholders that they usually accept the decisions they make, even if they do not always agree with them.

- 3.84 In many Member States (for example, Spain and the Netherlands), these alternative dispute resolution processes make binding decisions. However, in Germany these cannot be binding as the German Constitution guarantees that each party to a dispute may refer a case to court. The process is also not binding in Austria or Sweden.
- 3.85 Where no such process exists or if these cannot be used for the specific claim, passengers would have to take action through the civil courts, usually through simplified processes for small claims (where these exist). The need to appeal to the civil courts is likely to be a significant disincentive for the passenger to pursue the claim, given the complexity involved in this process, although this depends on the specific characteristics of the court service in the Member State concerned.
- 3.86 Table 3.16 summarises the dispute resolution processes that are available in each of the case study States.

TABLE 3.16 DISPUTE RESOLUTION PROCESSES

State	Alternative dispute resolution process	Simplified court process for small claims
Austria	SCG functions as an alternative dispute resolution process. It is free to use but is not binding.	Claims under €10,000 heard through District Courts. No lawyer required for claims under €5,000. For claims under €75,000 there is no hearing but a written decision is issued; however there can subsequently be an appeal.
Belgium	SNCB finances an independent ombudsman service. Passengers can complain to this if they have already complained to the NEB. For international journeys booked through a travel agent, there is also an alternative dispute resolution service	Simplified process for claims under €1,860. However, fees relatively high (€250), and risk of award of other parties costs.
Czech Republic	DUCR acts as an alternative dispute resolution mechanism. In addition there is a general umbrella ADR system covering all sectors, which is free to use but not binding.	None
Denmark	ABTM acts as an alternative dispute resolution body. However there is a charge of DKK 160 (€21) to complain to it.	Simplified process for small claims under DKK 50,000 (€6,650). However, losing party can be liable for costs (subject to a limit)
Finland	CDB acts as an alternative dispute resolution body, but for consumer claims only	None
France	SNCF Ombudsman provides a free mediation service for claims relating to SNCF.	Juges de Proximité provide a simplified process for small claims, but this will cease to exist from 1 January 2013.
Germany	Conciliation Body for Public Transport (SöP)	No separate small claims

State	Alternative dispute resolution process	Simplified court process for small claims
	provides passengers with a free but non binding arbitration service. Covers most railway undertakings. In addition, regional arbitration boards cover complaints about regional rail transport.	court although civil courts can adopt simplified procedure for claims under €600
Hungary	Free conciliation services available, operated through the county commercial chambers	Simplified process available for small claims, with a fee of 3%
Italy	Trenitalia has a Conciliation Committee run jointly with 12 consumer organisations to arbitrate on complaints where the consumer is not satisfied with its initial response. However this only covers non-PSO services.	Justices of the Peace provide a simplified process for small claims, with no lawyer required for claims under €516
Lithuania	SCRPA is the ADR for consumer disputes in Lithuania; no other ADR systems are available	None
Netherlands	Obligatory and binding arbitration process available through Arbitration Board for Public Transport (Geschillencommissie Openbaar Vervoer). Fee of €25 to passenger.	No separate small claims court; simplified process for claims under €5,000 in District Courts
Poland	Consumer courts provide an arbitration service which can be used if both the consumer and the company agree	Simplified process for small claims, with fee of PLN 30 (€7) for claims up to PLN 2,000 (€494)
Portugal	Free, voluntary but binding arbitration process available through six regional arbitration centres. In addition, justices of the peace provide a mediation service.	Simplified and accelerated court process for claims under €3,741 - no need for legal representation, and simplified rules for evidence.
Romania	None competent to handle transport cases	None
Spain	Passengers can appeal to the Transport Arbitration Boards (Junta Arbitral de Transportes) or the Consumer Arbitration System (Sistema Arbitral de Consumo). These provide a free, binding dispute resolution service. The NEB reported that RENFE always accepts the decisions.	Simplified court process available for claims under €2,000 - no lawyer required; a claim can be submitted on a standard form; and no possibility of award of costs.
Sweden	ARN functions as an alternative dispute resolution body. It is free to use but its decisions are not binding.	Simplified court process available for claims under SEK 22,000 (€2,480)
United Kingdom	None	Simplified court process available for claims under £5,000 (€6,000), with minimum total fee of £95 (€115) for claims under £300, and £285 (€335) for a claim of £2,000 (€2,400)

Stakeholder views on complaint handling and enforcement

- 3.87 We asked consumer representatives how effective the complaint handling and enforcement mechanisms were. However, most had limited awareness of these mechanisms. In many cases they considered it too early to reach any conclusions, as the complaint handling and enforcement mechanisms had only recently been established; the number of complaints is low; and in some cases there are extensive derogations which limits the scope for complaints to the NEB. One consumer association noted that its national NEB focussed on enforcement rather than assisting passengers with individual complaints.

Conclusions: Implementation of the Regulation by Member States

- 3.88 The Regulation allows Member States to exempt most rail services from most of the provisions of the Regulation, and several have introduced extensive exemptions. However, many Member States either have national laws which provide for rights similar to those defined in the Regulation, or they impose similar rights through the conditions attached to public service contracts. Therefore, even where services are exempt from the Regulation, rights similar to those defined in the Regulation may still apply. Partly for these reasons, in most Member States there have been few complaints specifically relating to the Regulation, and relatively few sanctions have been imposed for infringements.
- 3.89 We have identified some issues with enforcement in some States. Despite these, stakeholders generally raised few problems with the complaint handling or enforcement systems but it is not possible to draw clear conclusions about how effective these are, as there have been so few complaints to date that they have not generally been tested; although 15,000 complaints were received by the NEBs in 2011 we estimate that only 2,500-3,500 of these related to this Regulation.
- 3.90 However, there are particular problems with some Member States that have not yet complied with the obligations defined in Article 30 and 32 of the Regulation to designate an NEB and introduce sanctions into national law. In particular:
- France has not designated an NEB (except for Articles 29-31) or introduced sanctions, and on the basis of the (limited) information we were able to obtain from the French NEB, there do not appear to be any plans to comply with these requirements.
 - Italy has also neither formally designated an NEB nor defined sanctions, although it is currently preparing a decree which will do this.
 - In Austria and Romania, although NEBs have been designated and sanctions are available, there are not sanctions available for all infringements of the Regulation.
 - Portugal and Spain have not defined specific sanctions for infringements, although sanctions can be imposed under pre-existing national law. In Portugal this does not cover all infringements of the Regulation.
 - The Slovak Republic also reported that, although NEBs have been designated and sanctions defined, organisational, financial and personnel arrangements for complaint handling and enforcement are not yet in place.

- In Lithuania, and to a lesser extent in the Slovak Republic, the maximum level of the sanction is very low and therefore it is not clear that this can comply with the ‘effective, proportionate and dissuasive’ criteria in Article 32.
- 3.91 A key difference with the situation with the passenger rights legislation in air transport is that many operators exceed some of the requirements of the Regulation or the equivalent national legislation, either voluntarily or as a result of the requirements of national governments (for example through the concession contracts). They also often adhere to, and according to the information available, generally comply with, alternative dispute resolution systems which provide redress to passengers in the event of a problem. As discussed further below, in the course of our interviews, neither consumer representatives nor NEBs described deliberate or systematic non-compliance with regulatory requirements by railway undertakings, despite there being some specific issues with some specific railway undertakings.
- 3.92 As a result, there has to date been less need for active enforcement and in particular for imposition of punitive sanctions than in the air transport sector. However, some of the NEBs may have taken this view as they have undertaken limited activities to date: of the 17 case study States, 9 had not undertaken any inspections relating to the Regulation, and only 4 of their NEBs had had any more than limited cooperation with other NEBs. In most States (the main exceptions being the UK and Germany) few complaints have been received by the NEBs (just over 1,000 excluding the UK and Germany). In addition, only 3 Member States (Denmark, Hungary and Poland) had imposed a total of 10 fines on operators amounting to a total of approximately €330,000 in fines (excluding the administrative charges levied in Germany).
- 3.93 However, although the implementation of the Regulation by some Member States may be adequate for this current market situation, in several cases it is predicated on there being one national rail operator which, of its own choice or as a result of its concession contract, generally complies with the Regulation or the corresponding provisions of national law. It is not clear how well the enforcement system would work in the future if liberalisation and consequent changes to the structure of the market mean that there were more, competing, operators, particularly for-profit operators based in other Member States operating international services.
- 3.94 In particular, we would highlight the following issues which, whilst not causing significant problems to date, would need to be addressed:
- As noted above, several Member States have not yet complied with the requirements to designate NEBs and introduce sanctions into national law. Where sanctions have been introduced, in some cases they do not meet the ‘effective, proportionate and dissuasive’ criteria in Article 32, because the maximum level of the sanction is too low or sanctions are not available for all infringements.
 - In many Member States, only conditional or restorative fines can be imposed in cases of infringements (meaning that fines can only be imposed if the operator refuses to rectify an identified problem). These are likely to be less effective as an incentive for general compliance than punitive sanctions for past

infringements, because some infringements (for example failure to provide PRM assistance) cannot be rectified once they have occurred, and because a company can always avoid a sanction by providing redress when a specific case is identified by the NEB.

- The fact that, in most Member States, no sanctions have been imposed means that it cannot be excluded that there may be other problems with the process to impose sanctions which have not yet been identified because the process has not been tested. In particular, as the process is untested, it is often not clear whether sanctions could be imposed on, or collected from, non-national operators and therefore it is not yet clear that sanctions could be an effective deterrent against non-compliance by these operators.

Part 2: Implementation of the Regulation by railway undertakings

Introduction

- 3.95 This section summarises how the Regulation has been implemented by railway undertakings, and other bodies with responsibility for providing services specified by the Regulation. It covers:
- provision of information to passengers before and during the journey;
 - assistance to disabled passengers and persons with reduced mobility;
 - provision of assistance and compensation in cases of delays and cancellations;
 - carriage of bicycles;
 - liability for carriage of passengers and their luggage;
 - insurance and other provisions taken to cover these liabilities;
 - the requirement to take measures to protect passengers' personal security; and
 - the requirement to define service quality standards and publish service quality reports.
- 3.96 This section describes the actual policies applied by railway undertakings, but it should be noted that even where these are consistent with the Regulation, they are not always a direct consequence of it. They may also reflect either:
- national law, which (except for international services) can go further than the Regulation;
 - non-legislative government requirements, which may be defined through conditions in the concession contract; or
 - their own commercial policy - which may indirectly be government policy, as government is often the sole shareholder for railway undertakings.
- 3.97 For the key areas of assistance to disabled passengers, and provision of compensation and assistance in case of disruption, we also have recorded what appears to be determining policy for each railway undertaking.

Summary of responsible parties and obligations

- 3.98 For reference, Table 3.17 sets out the main provisions of the Regulation relating to operators, and the corresponding Article. This table covers the obligations in the main text of the Regulation only, as there are too many requirements in the Annex

to conveniently summarise here, and in any case the obligations in the main text take precedence. The table shows that in most cases the Regulation places obligations on railway undertakings but in a few areas (particularly provision of assistance to disabled passengers and PRMs) the obligation may be on the station manager.

TABLE 3.17 SUMMARY OF REQUIREMENTS FOR OPERATORS UNDER REGULATION 1371/2007

Area	Article	Rights granted	Operator responsible
Bicycles	5	Railway undertakings to enable passengers to bring bicycles onto trains, subject to practicality and optional fee	Railway undertakings
Information	7, 8	Right to comprehensive information on services, both before and during the journey (for example regarding delays).	Railway undertakings, ticket vendors
	9	Guarantees on the methods by which tickets are to be made available for purchase.	Railway undertakings
	10	Computer information and reservation systems to be implemented, subject to TAP TSI	Railway undertakings, ticket vendors
	29	When selling tickets, passengers must be informed of their rights under the Regulation. Contact details of NEBs must be displayed at stations and on trains.	Railway undertakings, station managers, tour operators
Liability and security	11, 12	Placement of liability for the safety of their passengers with railway undertakings, and an obligation to have sufficient insurance to cover this.	Railway undertakings
	13	Right, in the event of death or injury, to assistance to meet immediate economic needs (in the form of an advance payment of at least €21,000 in the event of death) and to provide compensation (up to a limit of €161,000 ⁵ , or larger limit if set by national law).	Railway undertakings
	26	Obligation for railway undertakings, infrastructure managers and station managers to ensure passengers' personal security in railway stations and on trains.	Railway undertakings, infrastructure managers, station managers
Delays / cancellations / missed connections	16	Right to choice between reimbursement and continuation or rerouting when arrival at final destination is expected to be delayed by over 60 minutes.	Railway undertakings

⁵ Regulation 1371/2007 specifies 175,000 units of account.

Area	Article	Rights granted	Operator responsible
	17	Right to compensation in the event of delay or cancellation of a journey, with compensation varying between 25% of ticket price for short delays (1-2 hours) and 50% if longer.	Railway undertakings
	18	Obligation to provide assistance (food, drink, accommodation where necessary) where delay is over 60 minutes, and where assistance can reasonably be provided.	Railway undertakings
Disabled persons and PRMs	19	Right to transport at no additional cost, subject to compliance with non-discriminatory access rules developed with representative organisations	Railway undertakings, station managers, ticket vendors
	20	Disabled persons and persons with reduced mobility to be able to request accessibility information, or reasons in writing for refusal of carriage	Railway undertakings, ticket vendors, tour operators
	21	Stations, platforms, rolling stock and other facilities to be made accessible to disabled persons and PRMs, including in the absence of accompanying staff	Railway undertakings, station managers
	22, 23	Disabled persons and PRMs to be provided with assistance, free of charge, to enable them to board or disembark services, and to use services available on board trains	Station managers, railway undertakings
	24	Assistance is provided on condition that the passenger notifies their need at least 48 hours in advance. Only one notification is necessary. If no notification is made, all reasonable efforts must be made to assist the passenger.	Railway undertakings, station managers, ticket vendors, tour operators
	25	Railway undertakings are liable for the full value of any damage to mobility equipment	Railway undertakings
Service quality	27	Obligation for railway undertakings to establish complaint handling mechanisms regarding violations of these rights.	Railway undertakings
	28	Obligation for railway undertakings to establish service quality standards, and to publish their performance against them.	Railway undertakings

3.99 Table 3.18 sets out the main parties responsible for implementation of these requirements of the Regulation in the case study States. As discussed in section 2 above, we sought to make contact with some of the new entrant railway undertakings to discuss whether the Regulation raised specific issues for them, but were only able to get responses from three of them; more information on the information we were able to obtain is set out below (from paragraph 3.268).

TABLE 3.18 SUMMARY OF RESPONSIBLE PARTIES UNDER THE REGULATION

Member State	Railway undertaking(s) in scope	New entrant railway undertakings	Station manager
Austria	ÖBB-Holding (ÖBB)	WESTbahn	ÖBB-Infrastruktur AG
Belgium	Thalys, SNCB Holding (SNCB)		SNCB Holding manages the largest 37 stations (excluding platforms), while Infrabel manages the other unstaffed stations. Infrabel is also responsible for all platforms.
Czech Republic	České Dráhy (ČD)	RegioJet	České Dráhy
Denmark	Danske Statsbaner (DSB)	Arriva	Danske Statsbaner
Finland	VR Group (VR)		Finnish Transport Agency
France	SNCF	Thello	SNCF
Germany	Deutsche Bahn (DB)	Nordwestbahn, Netinera	DB Station & Service
Hungary	MÁV Start		MÁV
Italy	Trenitalia	NTV	RFI
Lithuania	Lietuvos Geležinkeliai (LG)		Lietuvos Geležinkeliai
Netherlands	Nederlandse Spoorwegen (NS)	Arriva	NS (subject to confirmation by Dutch Minister for Infrastructure)
Poland	PKP Intercity		PKP Railway Stations Division
Portugal	Comboios de Portugal (CP)		REFER
Romania	CFR Călători		CFR Infrastructura
Spain	RENFE		ADIF ⁶ ; RENFE (suburban stations only)
Sweden	SJ	Veolia	Jernhusen
United Kingdom	Eurostar		Network Rail, High Speed 1

Information provided to passengers

3.100 This sub-section summarises how railway undertakings have implemented the requirements relating to provision of information to passengers. It describes:

⁶ Note that, although ADIF is the station manager, it has been agreed in Spain that RENFE will provide PRM assistance and therefore ADIF has few obligations under the Regulation

- provision of information pre-journey, including on rights under the Regulation, as required by Article 10, Article 29(1) and Annex II;
- provision of information during the journey, as required by Article 10 and Annex II;
- information on discontinued services, as required by Article 7;
- sales and ticket reservations, including sale of through tickets, as required by Article 9(1);
- computerised information and reservation systems for rail transport (CIRSRT); and
- implementation of the provisions on information in the TAP TSI.

Information available pre-journey

- 3.101 Article 10 of the Regulation requires railway undertakings to provide to passengers pre-journey the information listed in Annex II. This includes general conditions applicable to the contract and information on lowest fares and quickest trips. We have checked what information is provided by operators:
- in stations or by phone; and
 - on-line.
- 3.102 We reviewed the information provided to passengers on the websites of railway undertakings, and discussed in interviews with them what they provided in stations or by phone. We also checked whether they included ticket conditions, Conditions of Carriage and information on rights under the Regulation.
- 3.103 Most of the Conditions of Carriage reviewed were consistent with the Regulation, although those of 5 of the 18 railway undertakings reviewed made no specific reference to the Regulation or COTIF. Several railway undertakings omitted relevant sections from their Conditions of Carriage; for example one operator made no reference to provision of assistance for PRMs, and it was not possible to assess the Conditions of Carriage of another operator, as we could not find these on their website (it is not clear whether they are provided after tickets are purchased). Several Conditions of Carriage were published only in the national language of the State of the railway undertaking; this does not infringe the Regulation, but would make it more difficult for non-national passengers to understand their rights.
- 3.104 Annex II Part I of the Regulation requires information on the quickest and cheapest journeys to be provided to passengers. Whilst this information always could be obtained from railway undertakings' websites, we found that:
- half (9) did not explicitly specify which were the fastest and cheapest journeys, but nonetheless did provide sufficient information for this to be readily identified; and
 - four only showed the ticket price after the passenger had selected the time they wish to travel; this could make it time-consuming for passengers to identify the cheapest fare.
- 3.105 We also assessed what pre-journey information was made available through non-online methods, principally at stations or ticket offices, and by telephone (through booking or information lines). The assessment of this provision of non-online information is based on what was provided to us by railway undertakings in

interviews; we have not been able to independently confirm that the stated information is provided.

- 3.106 All railway undertakings in the study provide ticket and timetable information at stations. This is provided through ticket office and station staff, through printed information and in many cases through interactive screens at stations. Several railway undertakings also provided information on disruption before passengers had started their trips, for example through text messages (where passengers have registered for these when booking tickets), through smartphone applications, and via social media.
- 3.107 Article 29(1) of the Regulation also requires railway undertakings (and any other organisations selling tickets), when selling tickets for journeys by rail, to inform passengers of their rights under the Regulation. Article 29(2) requires railway undertakings and station managers to inform passengers ‘in an appropriate manner’ of the contact details of the NEB, at the station and on the train; no further detail is given of what this should mean, but we have interpreted it to mean that the information should at least be readily available on the website of the railway undertaking. Regarding provision of contact details at the station and on the train, the Article does not specify that the information must be permanently provided; for example, if railway undertaking staff gave this information in the event of a delay, then this could be compliant.
- 3.108 For three railway undertakings, we were unable to find any information at all on rights under the Regulation on the website. Most other railway undertakings provided information on rights somewhere on their website, but did not link to this during the booking process; only 2 railway undertakings provided a link during the booking process.
- 3.109 We requested information from railway undertakings on whether they provided contact details for the NEBs at the station or on board, but received incomplete information. There were several approaches to providing information on contact details reported:
- provided with tickets;
 - displayed on passenger rights posters in stations; and
 - displayed on stickers on board coaches.
- 3.110 Several of the railway undertakings in the study are also station managers (CD, DSB, SNCF, MAV, LG and NS) and are therefore responsible for provision of information at stations. In the other case study States, the station manager could be responsible for the provision of this information.

Information available during the journey

- 3.111 Article 8 of the Regulation also requires railway undertakings to provide information to passengers during their journeys, covering (as set out in Annex II): on-board services, next station, delays, connecting services and security and safety issues.
- 3.112 We reviewed the information provided by railway undertakings, on the basis of data provided at interviews. All railway undertakings selected for the study were compliant, and all provided information at least through on-board staff. Many also used on-board announcements or screens, 5 sent SMS messages to registered

passengers in the event of disruption, and 5 also provided real-time information through smartphone apps.

Procedures for informing passengers of discontinued services

- 3.113 Article 7 of the Regulation requires railway undertakings or competent authorities responsible for a public service contract to make public any decisions to discontinue services. It does not specify timings or media which must be used for this, other than that these shall be ‘appropriate means’, and before the implementation of the change. Our assessment of the implementation of this requirement is based on information provided to us by railway undertakings and other stakeholders in interviews. As in most States discontinuation of services is rare, it is not possible to verify whether these policies have been applied in practice.
- 3.114 On the basis of the information provided to us at interviews, all railway undertakings interviewed had implemented this requirement, to the extent it was relevant. Approaches to it varied between railway undertakings. The best approaches were comprehensive, involving:
- consultation with affected parties before taking decisions;
 - mitigation measures to reduce the effects of the reduction in service;
 - communication of decisions in adequate time; and
 - use of a wide range of media for communication.
- 3.115 Consultation can involve meetings with affected user groups - such as commuter groups - where the effects of the discontinuation are discussed, and possible mitigation measures (such as replacement bus services) are discussed. Communication of decisions usually involves notices of what services are affected and dates of changes, displayed at affected stations, in printed timetables, and on websites. Where information is provided on websites, it is often linked to on the front page. Some railway undertakings also send emails to travel agencies and members of loyalty programmes. ČD uses a colour-coding system, where different colours of poster correspond to different types of change; for example, posters displaying timetable changes are orange, while posters for tariff changes are purple. Where the changes are significant, information may also be provided to local press and radio, and if the changes affect services on other railway undertakings, these operators are also informed. Where customers have season tickets, they may be contacted individually. The timings of providing information varied between carriers, varying from 2 months before planned timetable changes to 1 year in advance (where possible).
- 3.116 One operator also told us that, where a direct service was withdrawn, it put in place and publicised special fares for travel via indirect routes.
- 3.117 Some railway undertakings informed us that such decisions were not their responsibility. For example, one operator informed us that decisions to discontinue services are made by their Parliament, and therefore this is not within their remit.
- Sales and ticket reservations*
- 3.118 Article 9(1) requires railway undertakings to offer through tickets and reservations where they are available. However, it does not require these to be available for

any specific routes. We assessed the extent to which through tickets are available and offered, on the basis of information provided at interviews.

- 3.119 Railway undertakings informed us that the main obstruction to offering through tickets related to the systems used for making reservations. There are two classifications of ticket: non-reservation ticketing (NRT), where no reservation is made and the ticket is valid on all services, and integrated reservation ticketing (IRT), where the ticket is only valid on a specified service. IRT (or 'global') fares are provided through a number of networks (for example, many railway undertakings use HERMES, a Europe-wide data networking system), while NRT fares are offered through tariff and price exchange interfaces provided by UIC.
- 3.120 There are practical issues around arranging through tickets which include services handled by both of these classifications of ticket, and several railway undertakings stated that the through tickets they offered were limited by difficulties in interaction between systems. For example, RENFE has its own bespoke ticketing system, which does not allow for through tickets even between different RENFE services; the UK rail operators also have their own system although this does allow through tickets within the UK. Some railway undertakings have specific agreements which address these issues and make through tickets possible. For example, it is possible to purchase Eurostar tickets to 'Any Belgian station' and 'Any Dutch station' which are valid on the specific Eurostar plus any SNCB or NS train.
- 3.121 Most railway undertakings stated that where through ticket availability was limited, this was due to technological limitations or lack of passenger demand. One long-distance operator gave four criteria for offering through ticket services:
- there is sufficient demand;
 - it is cost-effective to implement the necessary ticketing and reservation systems;
 - the services are profitable; and
 - there is agreement with the carriers concerned.

Computerised information and reservation systems for rail transport (CIRSRT)

- 3.122 Article 10 requires all railway undertakings to make use of computerised information and reservation systems (CIRSRT). Although all but one of the railway undertakings covered by the study had implemented some form of computer reservation system, these systems are not always compliant with the TAP TSI, and therefore they are not CIRSRT as defined by the Regulation. We were informed that TAP TSI compliant systems had already been implemented by three operators; several others operators were developing new systems.
- 3.123 Most railway undertakings had fully computerised information and sales systems, which offered the same range of tickets which could be purchased in stations. Several different systems are used to provide the information:
- ČD and Eurostar use the industry MERITS (Multiple European Railways Integrated Timetable Storage) database to offer timetables information. This is a database containing the timetable data of 32 railway companies, issued on a monthly basis, which is designed to provide one single source of timetable data.
 - ČD uses HERMES for reservations (see 3.119).

- Eurostar, NS, SNCB and Thalys use the BENE system for information and booking. This is a system developed by NS and SNCB (with Amadeus for some tickets), which allows international rail booking between Benelux countries.
- Eurostar handles reservations and tickets through bilateral agreements with other operators.

3.124 Several operators do not have reservation systems for some services (regional or domestic). One operator informed us that it does not have a computer reservation system at all; in addition, its systems used for domestic ticket sales do not comply with TAP TSI requirements. It plans to introduce a computer reservation system by 2014.

Implementation of the TAP TSI

3.125 Article 10(3) required the Commission to adopt a TSI on telematics applications for passengers (TAP TSI). The TAP TSI⁷ sets out standards for interoperability which railway undertakings must apply to their telematics systems, which include their websites. The standards apply in different phases, with several coming into force in 2014, however those relating to websites applied six months after it came into force (i.e. November 2011). Therefore, we have reviewed the websites of railway undertakings selected for the study for consistency with these requirements.

3.126 The websites of railway undertakings are required to publish:

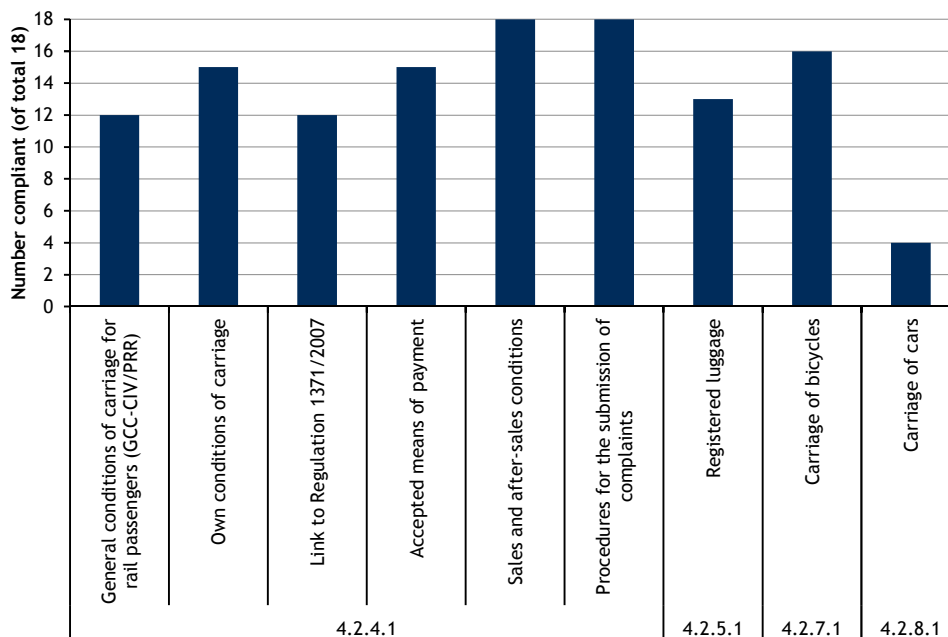
- information relating to conditions of carriage and tickets (4.2.4.1)
- conditions relating to handling registered luggage (where available) (4.2.5.1);
- information on facilities available for disabled passengers and PRMs (4.2.6.1);
- conditions relating to carriage of bicycles (4.2.7.1); and
- conditions relating to carriage of cars (4.2.8.1).

3.127 Our review of the requirements relating to information for disabled persons and PRMs is discussed below (see 3.135); this section sets out the review of the implementation of the other requirements.

3.128 Figure 3.3 below shows a summary of the implementation of each requirement of these requirements. Our analysis shows that railway undertakings had implemented most of these requirements for their websites. However, only 12 of the 18 reviewed provided a link to the Regulation, or provided the GCC-CIV/PRR, and only 13 explicitly stated that they offered registered luggage. The requirements relating to sales and after-sales conditions, and procedures for the submissions of complaints, had been implemented effectively by all of the railway undertakings reviewed. Although only 4 had implemented the requirement on carriage of cars, only 5 of the sample do carry cars; in contrast to parameter 4.2.5.1 on registered luggage, parameter 4.2.8.1 does not require railway undertakings that do not provide the service to specify that they do not.

⁷ Regulation 454/2011 on the technical specification for interoperability relating to the subsystem ‘telematics applications for passenger services’ of the trans-European rail system, 5 May 2011.

FIGURE 3.3 COMPLIANCE OF RAILWAY UNDERTAKINGS WITH PARAMETER 4.2.4.1, 4.2.5.1, 4.2.7.1 AND 4.2.8.1 TAP TSI



3.129 Regarding the parameters of the Regulation which are yet to come into force, some railway undertakings had undertaken preparatory work. One operator stated that it had regular discussions with the TAP TSI team regarding the development of international rail distribution models. Two other operators informed us that at present their systems did not conform to the TAP TSI, but that they were implementing changes to ensure that this was rectified.

Disabled persons and persons with reduced mobility

3.130 The Regulation defines a number of rights for disabled persons and PRMs travelling by rail, which place obligations on railway undertakings:

- the right to information on accessibility pre-journey (Article 10, Annex II and through implementation of the TAP TSI);
- the right to transport, with a prohibition on refusal of carriage except where necessary to comply with access rules (Article 19);
- the right to assistance to enable them to board or disembark services, and to use services available on board trains (Articles 22 and 23), subject to advance notification (Article 24);
- requirements to adapt infrastructure and rolling stock through compliance with the PRM TSI (Article 21); and
- a prohibition on limitation of liability for damage to mobility equipment (Article 25).

3.131 We set out below our assessment of the implementation of these requirements. Although not specifically addressed by this Regulation, we have also identified where the prices offered to disabled passengers and PRMs discriminate on the grounds of nationality or residence.

- 3.132 The right to assistance is provided subject to the passenger notifying any needs at least 48 hours in advance of travel. If the passenger does not pre-notify, the railway undertaking has to make reasonable efforts to provide assistance. This section sets out our review of the implementation of these requirements.

Rationales for railway undertaking policy

- 3.133 As discussed above, the actual policies applied by a railway undertaking may reflect either the Regulation, national law, government policy, or the policy of the railway undertaking. Table 3.19 below sets out details of what determines policy regarding carriage of disabled passengers and PRMs for each of the railway undertakings selected for the study. It is important to note that the Regulation does not include any requirements for physical adaptations to infrastructure and rolling stock (other than compliance with the PRM TSI, which is only required at EU-level for new-build and renewals of rolling stock and infrastructure)⁸; therefore, any provisions in relation to this reflect either national law or policy. In many cases, it is either national law or the policy of the specific railway undertaking, rather than the Regulation, which is determining what is provided.

TABLE 3.19 RATIONALE FOR RAILWAY UNDERTAKING PRM POLICIES: CARRIAGE OF DISABLED PASSENGERS AND PRMS

Railway undertaking	Rationale for policy
ČD	<ul style="list-style-type: none"> ■ National law sets out discounts ■ Railway undertaking policy gives notice period shorter than 48 hours for most services, arrival time 30 minutes before departure ■ National law determines requirements for stations to be accessible
CFR Calatori	<ul style="list-style-type: none"> ■ Regulation for most areas (international services only) ■ National law makes limited/generic references to considering the needs of PRMs for infrastructure, rolling stock and vehicle classification
CP	<p>National law defines the following</p> <ul style="list-style-type: none"> ■ Railway undertakings required to define non-discriminatory access rules ■ Right to assistance on board the train, in the station, and when embarking and disembarking ■ General obligation to implement measures necessary to meet the needs of PRMs <p>Railway undertaking policy provides discounts for assistants on some services</p>
DSB	<ul style="list-style-type: none"> ■ Regulation defines most aspects ■ Accessibility of stations defined by Danish accessibility law
DB	<p>National law defines the following</p> <ul style="list-style-type: none"> ■ Railway undertakings required to provide assistance ■ New build and retrofitted rolling stock and infrastructure have to

⁸ However, some stakeholders appear to have interpreted Article 21(1) to mean that the PRM TSI is immediately applicable (see 3.309 for discussion).

Railway undertaking	Rationale for policy
	<p>comply with accessibility requirements</p> <ul style="list-style-type: none"> ■ Requirement to cooperate with PRM associations to develop programmes for retrofit of rolling stock and stations; programmes have to be submitted to the Ministry and NEB <p>Carrier policy to require 24 hours' notice</p>
Eurostar	<p>Regulation applies for most aspects</p> <p>Carrier policy not to require notification, and to make all rolling stock accessible</p>
LG	<p>National law defines provisions similar to the Regulation with the main exception being it does not require designated points of arrival at stations, or information at unstaffed stations</p> <p>Carrier policy to require 24 hours' notification for domestic travel</p>
MÁV Start	<p>National law defines the following</p> <ul style="list-style-type: none"> ■ Assistance has to be provided ■ Stations have to be made accessible to PRMs when constructed or modernised ■ Discounts for disabled passengers
NS	<p>National law requires that PSO concession contracts define provisions on accessibility</p> <p>Carrier policy permits companion to travel free of charge, and gives 3 hour notice period for assistance on domestic travel</p> <p>Government policy provides free taxi service to stations</p>
ÖBB	<ul style="list-style-type: none"> ■ Most policy based on Regulation ■ Carrier policy to offer 24 hours' notice for assistance, arrival 20 minutes before train departure, and at-seat catering service for some passengers ■ National law requires measures to improve accessibility by 2015
PKP Intercity	<ul style="list-style-type: none"> ■ Most policy based on the Regulation ■ National law defines discounts and requirement for adaption of infrastructure
RENFE	<ul style="list-style-type: none"> ■ National law defines general right to access to transport (not specific to rail) ■ Carrier policy gives discounted fare for accompanying passengers, requires 12 hours' notice for assistance (or none for larger stations), and arrival 30 minutes before train departure
SJ	<ul style="list-style-type: none"> ■ No national law - the Regulation applies ■ Carrier policy to require only 24 hours' notice for domestic travel and arrival 30 minutes before train departure
SNCB	<ul style="list-style-type: none"> ■ No rights defined in national law, but defined in public service contract between SNCB/NMBS and the Belgian State
SNCF	<p>National law defines the following</p> <ul style="list-style-type: none"> ■ Legislation is focussed on adaption of infrastructure to ensure accessibility, rather than provision of assistance

Railway undertaking	Rationale for policy
	<ul style="list-style-type: none"> ■ Requirement to adapt stations and rolling stock to be accessible within 10 years ■ Requirement to provide alternative transport services for PRMs when physically impossible to adapt a network <p>Otherwise dependent on the policy of the railway undertaking, as Regulation does not apply.</p>
Thalys	<ul style="list-style-type: none"> ■ Most policy based on Regulation ■ Carrier policy to offer disabled passengers 1st class seats at standard prices
Trenitalia	<ul style="list-style-type: none"> ■ Most policy based on the Regulation ■ Carrier policy to offer 1 hour's notice for assistance requested by phone at some stations, 24 hours' where by email, and at-seat catering service for some passengers
VR	<ul style="list-style-type: none"> ■ Most policy based on the Regulation ■ Carrier policy permits assistants to travel for free, and permits passengers requiring assistance to arrive at stations 30 minutes before train departure

Information on accessibility

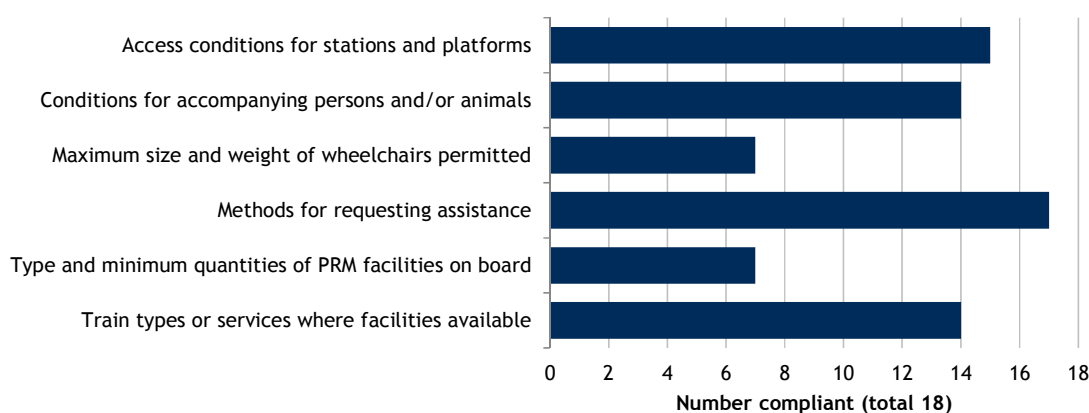
- 3.134 Annex II of the Regulation lists information which must be provided to passengers pre-journey; this includes information on accessibility, access conditions and availability on board of facilities for disabled persons and persons with reduced mobility. The Regulation does not specify any means by which this information must be provided, but states that it must be provided upon request.
- 3.135 The TAP TSI⁹ sets out information which must be provided on the websites of railway undertakings. It requires the following information relating to services for disabled passengers and PRMs:
- the train types/numbers and/or line number (if no train number is available for the public) where PRM facilities are available;
 - the types and minimum quantities of PRM facilities in the above trains (such as wheelchair seats, PRM berths, PRM toilets and location of PRM seats), under normal operating conditions;
 - the methods of requesting assistance for boarding and disembarking from trains (including any advance notice period, and the address, e-mail, telephone number and operating hours of the office(s) for PRM-assistance) according to Article 24 of the Regulation;
 - the maximum size and weight of wheelchair (including the weight of the PRM) permitted;
 - the transport conditions for accompanying persons and/or animals; and

⁹ Regulation 454/2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system

- conditions of access to the station building and platforms, including whether the station is classified as accessible for PRMs and whether is staffed for PRM support.

3.136 We reviewed the websites of the sample railway undertakings to check whether this information was provided. Figure 3.4 shows how many operators had implemented each of these requirements. The most significant issues were with the requirement on provision of information on the type and minimum quantities of PRM facilities on board, and with information on the maximum size and weight of wheelchairs permitted. Note that, where we state a railway undertaking is compliant, this indicates that they had implemented the requirement to provide the information, and does not imply any comment on the policy described.

FIGURE 3.4 IMPLEMENTATION OF PRM REQUIREMENTS OF TAP TSI



3.137 We requested information from railway undertakings of the information on accessibility provided in stations and via other offline sources. Based on the information provided to us, all of the railway undertakings selected for the study have implemented this element of the Regulation, although with some variation in the level of detail described.

3.138 Several railway undertakings stated that they provide exactly the same in stations as they do online (for example, ČD makes its printed timetable, which includes accessibility information, available online).

3.139 The details of what is provided in stations are taken from our interviews with railway undertakings. An independent view of the information provided was given by the representatives of disability organisations who responded to the study; in general, this did not identify any issues with the statements of the railway undertakings. EDF members commented on a number of States:

- Denmark:** Disabled people organisations in Denmark (DPOD) have worked to include accessibility information in the official Danish on-line route planner. The aim of this is allow disabled passengers to plan routes spontaneously and independently, without requiring 48 hours’ notice.
- Finland:** Information on accessible trains is more easily accessible via websites than printed time-tables. The accessibility of intercity trains is generally given, however that of local trains is not.
- France:** SNCF generally provides adequate information to guide dog users.

- **Germany:** DB generally provides adequate information to guide dog users.
 - **Romania:** CFR's website states that it provides free of charge certain services for disabled persons and persons with reduced mobility. However, these services are only available in some railway stations and in some trains in national and international traffic.
- 3.140 As not all of EDF's member organisations responded to the study, this list of States is not exhaustive, and there may also be issues in the States where we did not receive responses.

Development of access rules

- 3.141 Article 19(1) of the Regulation requires railway undertakings and station managers to develop non-discriminatory access rules with the active involvement of organisations representing disabled persons and persons with reduced mobility.
- 3.142 Our research indicates that the extent of involvement in this process has varied. In some States it has worked well; for example:
- in France, SNCF established in 2006 an advisory board of disability representative groups, which reviews any proposed changes to the service offered to disabled passengers and PRMs; and
 - in Lithuania, LG discussed the implementation of the Regulation with the Lithuanian Disability Forum, and as a result reduced the notification period for assistance from 48 hours to 24 hours; the forum also approves new or renewed infrastructure and rolling stock, and has provided basic disability awareness training for LG staff.
- 3.143 In contrast, in other States this involvement has been more limited. For example, one operator informed us that the details of its policy on carriage of PRMs were communicated to PRM organisations, implying that they were not involved in its development.
- 3.144 EDF members also reported that the extent of involvement in this process was variable. They reported that there had been cooperation in some States, but not in others (in one case the information from EDF contrasted with information from the railway undertaking concerned, which stated that it had had long-standing collaborations with a number of disability organisations). In general, EDF said that its members considered the railway industry was not receptive to requests for accessibility improvements to rolling stock and infrastructure, and that it was difficult to obtain deadlines for achievement of this.

Policies on acceptance of disabled persons and PRMs for carriage

- 3.145 Article 19(2) of the Regulation requires railway undertakings to offer disabled persons and PRMs reservations and tickets at no additional cost, and only to refuse to accept reservations (or to require passengers to be accompanied) where strictly necessary to comply with the access rules. Article 20 requires railway undertakings to provide information on accessibility to disabled persons on request, and where they refuse carriage, to inform them in writing of the reasons for doing this.
- 3.146 We requested information on the number of times railway undertakings had refused to accept reservations on these grounds. Most of the operators selected for the study stated that they never refused to accept reservations on the basis of a passenger's level of mobility. Several qualified this with the statement that where

there was insufficient space (e.g. on a train with limited wheelchair spaces) or where infrastructure for a journey was not suitable, they tried to agree a suitable alternative for the passenger. Others stated that under some circumstances they would require passengers to be accompanied; for example, one operator requires passengers to be accompanied where they cannot perform basic functions without assistance (such as feeding themselves, using toilets or breathing without additional oxygen). Another operator stated that reservations may be refused where a passenger requests a journey from an unstaffed and non-accessible station, or on non-accessible stock.

- 3.147 Most railway undertakings stated that they did not keep statistics on how frequently they had refused carriage. Only three provided statistics; the highest was that 3% of requests were denied.
- 3.148 Some operators stated that there were safety or operational constraints that limited the number of passengers requiring assistance it was possible to carry simultaneously: for example, one operator stated that its current trains have two spaces for wheelchairs each, and if both were occupied then a passenger would be required to travel on the next available service.
- 3.149 None of the railway undertakings reviewed charged explicitly higher prices for tickets for disabled persons or for requesting assistance. However, if assistance has to be requested by phone, in some cases there is a fee for calling the number. For example, one requires passengers to call a number which would have a fee of €1 plus a local call cost, or book at the counter at the station (which is not a convenient alternative as it must be done at least 48 hours in advance). Many railway undertakings provided standard geographic telephone numbers, rather than 'toll free' numbers, for booking tickets or requesting assistance; while these could incur small call charges, we have regarded this as compliant with the requirement to provide tickets or assistance at no additional cost¹⁰.
- 3.150 A passenger who uses a wheelchair may need to reserve a specific seat in an accessible coach. Some railway undertakings allow passengers to book these seats online (for example, Eurostar), while others do not. Some require tickets for assistants to be booked over the phone. For example, with one operator, tickets may be purchased online, at ticket offices or over the phone, but tickets purchased over the phone must be for the day of departure only; as disabled passengers must provide notification at least 48 hours in advance, they would not therefore be able to purchase by phone.
- 3.151 EDF members reported that in general disabled passengers and PRMs had not experienced any significant problems with refusal of carriage or reservations. However, they provided some comments on issues they were aware of in specific States. In Finland, reserving a ticket can be sometimes difficult because the ticket has to be fetched separately from the ticket counter, so reservations for assistance must be made separately from ticket purchase. In some States (including Germany), guide dog users need reservations for two seats and this can only be done by telephone. In Germany, the number is not toll free, but the reservations are. In France, the number is not toll free, and no tickets are required for guide

¹⁰ The rationale for this is that a standard geographic number may be better than a 'toll free' number, depending on the telephone service concerned. On many mobile phone contracts calls to standard geographic telephone numbers are free, while calls to 'free' numbers are charged.

dogs. Several disability representative organisations informed us that where free tickets were available for accompanying assistants, there were sometimes disagreements on whether or not the disabled passenger needs an assistant.

Price discrimination on grounds of residence or nationality

- 3.152 The Regulation does not contain any provisions on price discrimination, and therefore evaluating this is not a primary objective of this study. However, discrimination directly based on nationality would infringe EU law, and discrimination based on residence may often be considered to do so, depending on the circumstance¹¹.
- 3.153 Many railway undertakings offered discounts to disabled passengers and/or to passengers accompanying them. We have assessed whether these discounts vary depending on nationality or residency.
- 3.154 None of the discounts offered by railway undertakings directly discriminated on the grounds of nationality. However, several stated that some discounts were explicitly dependent on residency in the Member State concerned. In addition, others offer discounts which, whilst not explicitly requiring residency, may be difficult or impossible for non-residents to obtain, because they cannot otherwise obtain the documents necessary to prove eligibility. This is because the railway undertaking only accepts as proof of disability a type of disability certification document that is legally recognised within the Member State concerned; there is no EU-wide recognised form of disability certification. For example, in Spain, if a passenger has a disability certified as greater than 65% (in accordance with the certification issued by the region in which the person lives), they can for a small fee obtain a ‘Tarjeta Dorada’ which entitles them and any accompanying passenger to discounts of 25%-40%. As the certification is issued by the Spanish regions, the ‘Tarjeta Dorada’ would only be available to Spanish residents.
- 3.155 For issues such as this to be addressed, it would be necessary to have an EU-wide system to categorise and certify disability, or at least some form of mutual recognition of the systems adopted in different Member States.

Means of notification of requests for assistance

- 3.156 Article 24 requires any organisation selling rail tickets to allow passengers requiring assistance to notify them of their needs. Railway undertakings, station managers, ticket vendors and tour operators must take all necessary measures to receive notifications, and where the ticket permits multiple journeys, the passenger need only make one notification.
- 3.157 In order to assess this, we requested information on the processes which railway undertakings had put in place to accept notifications. On the basis of this, we identified best practice as follows:
- Passenger details are taken, including: date and time of travel, route, name and telephone number of the passenger or the telephone number of the person making the request (if different), nature of disability of the person intending to travel, any mobility equipment used by the passenger, other relevant

¹¹ See Steer Davies Gleave (2008): Assessment of contract conditions and preferential tariff schemes

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information (for example, whether the passenger will be accompanied by a guide dog).

- The railway undertaking confirms booking of assistance by email.
- The railway undertaking informs the passenger of where and when they should arrive to receive assistance.

3.158 It is helpful for passengers if they can notify their needs for assistance at points of sale, and several railway undertakings permit this. The Regulation does not explicitly state that it must be possible to notify needs for assistance at the point of sale, but Article 24(a) requires that disabled and PRMs must be able to give notification of assistance needs to ticket vendors and tour operators, in addition to railway undertakings; although it is not completely explicit, this implies that passengers should be able to notify their needs at the point of sale at least when purchasing through these channels.

3.159 The Regulation requires that assistance must be provided if passengers notify at least 48 hours in advance, and the railway undertaking has to make reasonable efforts if the passenger provides less notice. In fact, many railway undertakings specify shorter pre-notification periods than the Regulation requires. Several require only 24 hours' advance notice including ČD (for most services), DB for all services, LG, ÖBB and SJ (for domestic services). Some have shorter periods:

- Eurostar does not require assistance to be pre-booked, and provides it subject to passengers arriving at the station 1 hour before their train;
- RENFE does not require assistance to be pre-booked at larger stations where it provides a permanent assistance desk, and at other stations, only 12 hours' advance notice is required; and
- the advance notice period is 1 hour for services operated by Trenitalia at certain Italian stations, and 3 hours for domestic services with NS.

3.160 However, not all railway undertakings comply fully with the advance notification requirement:

- One operator requires 48 hours' notice, but notification may only be received on working days, meaning that if a passenger needs assistance in the 48 hours after a long public holiday period such as Christmas, they would need to give 5-6 days' notice; and
- Two railway undertakings specify periods of 72 hours for certain types of bookings.

3.161 None of the railway undertakings we interviewed explicitly stated that they would not accept passengers if they did not give sufficient notice. Most stated that they would make all efforts to enable passengers to use the service, however several implied that a lower level of service would be provided, particularly if staff were not available. For example, one operator stated that they would, if possible, provide a minimum package of assistance and support to allow the passenger to use the service.

3.162 Another railway undertaking also informed us that passengers often do not meet its required 24 hour notice period.

3.163 Many railway undertakings did not specify how long before the time of departure passengers requiring assistance are required to arrive at the station. Where a time

is specified, it is consistent with the requirement of the Regulation (60 minutes), and many railway undertakings specify shorter times.

- 3.164 EDF's members found difficulties with the methods available for giving notifications. It also stated that the requirement for 48 hours' notice for notification is regarded as restrictive by many disabled people, as it requires them to plan travel many days in advance.

Notification to tour operators and ticket vendors

- 3.165 Article 24(a) allows disabled passengers and passengers with reduced mobility to give notification of needs for assistance to ticket vendors and tour operators, in addition to railway undertakings. While few NEBs had explicitly assessed how well this functioned, the German NEB (EBA) undertook checks of travel agencies in 2011. It found that there were significant differences in the level of implementation of the Regulation, with particular problems around notification. In some cases, travel agencies were completely unaware of the Regulation while others were not accepting notifications and forwarding people directly to the rail company. Following these inspections EBA repeated the assessment and found that travel agencies had significantly improved their approach in this area.

Types of assistance provided

- 3.166 Articles 22 and 23 require station managers and railway undertakings, respectively, to provide assistance to disabled passengers and PRMs at stations and on board trains. The assistance must be sufficient to enable passengers to embark and disembark from trains, and use the services on board. This section sets out the assistance provided by the railway undertakings and station managers selected for the study.
- 3.167 All of the railway undertakings and station managers that we interviewed for the study stated that they complied with the Regulation in this area; some informed us that their domestic services were exempt from these Articles, but that it was their policy to provide the assistance anyway. It was not possible for us to independently audit how well their policies were implemented, but we have reviewed the comments of PRM organisations on the standards of the services provided.
- 3.168 Several railway undertakings informed us that the assistance provided was chosen to suit the needs of individual passengers. The passengers' requiring most assistance are usually those who use wheelchairs or other mobility equipment, as opposed to passengers who were visually or hearing impaired, or with learning disabilities. Those not using mobility equipment who did require assistance generally request a guide to assist them through the station, but do not require any particular equipment.
- 3.169 Stations can be inaccessible as a result of low platforms, difficult surfaces and stairs. Stations can be made accessible through ramps and/or lifts in the place of stairs, and through platforms which are aligned with the train doors. If the station is accessible then wheelchair users may not need staff to assist them. Where stations or trains are not fully accessible, the best practice assistance provided to passengers using mobility equipment is as follows:

- I At stations:** Passengers are met at the designated meeting point (which may be at the ticket counter, or outside the railway station) or at a point agreed with the passenger when they requested the assistance. They are then assisted to a point of sale if necessary, and to the relevant platform. Passengers are similarly assisted between connecting services.
 - I Embarking/disembarking:** Assistance in boarding passengers using wheelchairs may vary depending on the weight of the wheelchair. If the passenger has some mobility and the wheelchair is light and foldable, then the passenger may be assisted by hand and the wheelchair carried on board. For heavier wheelchairs, mobile platform lifts or on-vehicle lifts may be used. The manager of the train is advised of the presence of the disabled passenger, and may confirm that assistance will be ready at the passenger’s station of arrival.
 - I On board:** On board assistance is provided to allow PRMs access to the same services in the train as other passengers, where the passenger is not able to access those services independently. The passenger is given information on the services on board.
- 3.170 Some operators provide services in addition to these. For example, PR may sometimes request a change of platform to ensure that the passenger can board from an accessible platform (e.g. that adjoining the station building). Trenitalia and ÖBB provide catering services directly to a passenger’s seat, where possible.
- 3.171 The Regulation requires station managers to designate points within and outside the station at which passengers can announce their arrival and request assistance. Some have done so (for example Renfe has ‘Atendo’ service desks at its major stations), but several railway undertakings informed us that they had not implemented this formally for all stations, and that in some stations the meeting points were arranged on a case by case basis. For example, one agrees meeting points with passengers by phone.
- 3.172 Regarding unstaffed stations, the Regulation requires railway undertakings and station managers to ensure that information is displayed on the nearest stations which provide assistance. SNCB provides more than the Regulation requires, as it offers a taxi service from some unstaffed stations to stations offering assistance.
- 3.173 EDF members reported that in general, few stations are staffed and therefore assistance can be difficult to obtain, particularly during off-peak periods and in rural areas. In addition, they stated that in the transport sector there is a lack of staff trained appropriately to provide assistance.
- 3.174 Although the Regulation states that assistance at stations should be provided by station managers, in most cases it is actually provided by railway undertakings. Where multiple railway undertakings serve the same station, it is generally the main national railway undertaking that provides assistance (Table 3.20 below). This situation has not generated problems to date, although it is not clear that this would work in the future if there were multiple competing railway undertakings.

TABLE 3.20 RESPONSIBILITY FOR PROVIDING ASSISTANCE

Railway undertaking	Provision of assistance at stations
CD	Assistance provided by CD, or at some stations by SZDC (infrastructure

Railway undertaking	Provision of assistance at stations
	manager).
CFR Calatori	Domestic services and international services outside the EU are exempt from Articles 22 and 23.
CP	REFER
DSB	DSB
DB	DB
Eurostar	In UK and Belgian stations, by dedicated Eurostar staff. In French stations, by station manager.
LG	LG
MAV Start	MAV: domestic travel is exempt from Article 23, but MAV-Start will provide assistance for arranged group travel.
NS	NS
ÖBB	ÖBB
PR	Assistance arranged on specific regional basis with station and infrastructure managers. Infrastructure manager is responsible for platforms, subways and footbridges.
PKP Intercity	PKP Intercity
RENFE	RENFE
SJ	Jernhusen (station manager) and the Swedish Transport Administration. There is also a taxi service for disabled people provided by a State-funded body, Riksfärdtjänsten.
SNCB	SNCB
SNCF	SNCF, although in some larger stations it has a contract with outside providers.
Thalys	Not applicable; Thalys is not station manager for any station. Assistance would be provided by SNCB, NS, SNCF or DB staff.
Trenitalia	RFI
VR	Confidential

Accessibility of infrastructure and rolling stock

- 3.175 Article 21 of the Regulation requires railway undertakings and station managers to ensure that the station, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility. In addition, in the absence of accompanying staff on board a train or of staff at a station, railway undertakings and station managers must make all reasonable efforts to enable disabled persons or persons with reduced mobility to have access to travel by rail.

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- 3.176 We requested information from the railway undertakings and station managers selected for the study on:
- the proportion of the network or services that were accessible;
 - any plans in place for future improvements to infrastructure or stock; and
 - any measures taken to ensure accessibility at unstaffed stations.
- 3.177 In addition, we reviewed the Network Statements of infrastructure managers for the case study States. Infrastructure managers are required by Directive 2001/14/EC¹² to produce a Network Statement, which provides all information necessary for railway undertakings to access the network. Most did not contain any reference to passenger accessibility (they are not required to), however several contained information on programmes for future improvements to stations.
- 3.178 We found significant variation in the level of accessibility for services provided by different operators. For example, Eurostar informed us that all stock and infrastructure used on its services is already accessible, whereas another operator informed us that only 35% of train sets were accessible, and that there were difficulties with ensuring accessibility at many stations.
- 3.179 Regarding planned improvements, many railway undertakings had not defined deadlines by which older stock would be retrofitted to ensure compliance with the PRM TSI (although the TSI does not require this). Several informed us that future improvements to accessibility would be limited by financial constraints.
- 3.180 In order to identify any impact that exemptions from the Regulation have had, we have looked at some of the international services provided by operators whose domestic services are exempt from provisions relating to disabled passengers with international services provided by non-exempt operators, to identify any differences in accessibility. However, no clear conclusions can be drawn. Of the operators selected for the study, only 3 had full domestic exemptions from the provisions relating to carriage of disabled passengers, and of these one does not operate international services within the EU, and another did not provide any information regarding accessibility for the study. Of the other railway undertakings for Member States where there are full or partial exemptions from these requirements:
- In the UK, accessibility is better on international (Eurostar) services than domestic long distance services: the Eurostar rolling stock is all compliant with the PRM TSI whereas some domestic long distance rolling stock is older and is not compliant.
 - In Romania, accessibility for international services is better than for domestic: CFR Calatori uses accessible stock on a higher proportion of international services than domestic services, but still not all.
 - In contrast, in Spain, where there are partial exemptions for domestic services, the accessibility of international rail services is actually worse: Almost all domestic long distance trains are accessible but the direct Talgo and ‘Trenhotel’ trains operated into France and Portugal are relatively old and are not accessible.

¹² Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

- 3.181 However, EDF reported that in general, international travel is usually a better experience than domestic travel for disabled people, as international travel tends to be between large, staffed stations.

Compensation for damage to mobility equipment

- 3.182 Article 25 of the Regulation prohibits railway undertakings from imposing any financial limit on the compensation payable where it is liable for damage to a passenger's mobility equipment. There are issues around the interpretation of this Article (see part 3 of this section below).

- 3.183 Most of the railway undertakings we interviewed for the study stated that they did not place any restriction on what compensation they would pay, however we did identify some potential non-compliances:

- One operator regards damage to mobility equipment as identical to damage to other personal belongings, to be treated in accordance with national law or CIV, depending on the service. This would restrict the value of compensation payable, and is therefore not compliant.
- Another operator stated that supervision of mobility equipment is the responsibility of the passenger, and that therefore the operator would not give any compensation for such damage. As the operator could damage mobility equipment while handling it, it cannot absolve itself of this responsibility, and is therefore not compliant.
- A further operator stated that its civil liability insurance policy did not limit the value of compensation payable for damage to third parties (which would include damage to mobility equipment), but limited compensation for damage to belongings held for safekeeping by them to €240,000. If mobility equipment was damaged while in the keeping of the operator, then it would be liable and in theory this would impose a limit on the compensation payable (and therefore be non-compliant). However, damage to any piece of mobility equipment would be unlikely to exceed €240,000, so compensation for the full value of the equipment would in almost all circumstances be paid.

Stakeholder views on accessibility

- 3.184 EDF contacted its members for comments on the accessibility of both infrastructure and rolling stock. EDF emphasised that inaccessible railway stations are the primary barrier that prevents passengers with disabilities from accessing railway services. Several issues were raised regarding specific Member States (note that as not all of EDF's members responded, the States listed below are not exhaustive, and there may be issues in other States not listed):

- **Finland:** At some stations, new local trains are not accessible because of old low platforms.
- **Romania:** Only the stations in larger towns are accessible.
- **France:** All new stations are fully accessible but refurbishment of existing stations is slow; approximately 20% of existing stations are accessible.
- **UK:** Less than half of the stations have level access. A UK government programme, "railways for all", has some capacity for improvements of the station access, but it is very unlikely that the whole network will be 100 % accessible in the foreseeable future. Up until 2006, an accessibility map for persons with disabilities was produced in order to provide the customers with

information about the level of access of the station they wished to use, but it was not seen as reliable or accurate.

- **Denmark:** The Danish disability organisation reported that no measures have been taken to ensure access to rail travel in the absence of staff, and as a result non-staffed stations are difficult to access. However, it also stated that the Danish Parliament has allocated 27 million DKK (€3.6 million) over 2007 to 2014 to improve accessibility of infrastructure (mostly establishing lifts at stations) and for the provision of information systems for passengers with visual impairment.
- 3.185 Regarding rolling stock, EDF believed that the availability of wheelchair spaces was an issue across many Member States. It also identified Community-wide issues resulting from the current PRM TSI, which it believes is not sufficient. For example, EDF informed us that the standards for accessible toilets set out in the TSI are too small and do not fit all wheelchairs, and therefore exclude many wheelchair users from being able to use the toilet independently. There is also a lack of clarity in the TSI on the dimensions specified for wheelchair-accessible sleeping coaches. In addition, the PRM TSI does not contain deadlines for compliance for older rolling stock. It also identified issues with insufficiently powerful lifts, steep ramps and narrow doors.
- 3.186 EDF also informed us of some State-specific issues regarding rolling stock (as above, note that there may be issues in other States which are not listed):
- **Finland:** New stock in Finland is generally accessible, but restaurant coaches are inaccessible and sleeping coaches do not have adequate space for wheelchair users. In addition, intercity trains have ramps for wheelchair access, but local trains do not.
 - **Denmark:** There does not seem to be either a programme or budget for retrofitting older stock.
- 3.187 EDF informed us that compensation procedures for damage to mobility equipment are usually in place, however it raised concerns about theoretical difficulties with passengers obtaining the full value of the damaged equipment without resorting to court action.

Assistance and compensation in cases of delays and cancellations

- 3.188 The Regulation defines a number of rights in cases of delays, cancellations and other disruption:
- Article 16 requires railway undertakings to offer passengers a choice between rerouting and reimbursement in the event of a delay of more than 60 minutes;
 - Article 17 requires railway undertakings to offer compensation, calculated as a proportion of the ticket price; and
 - Article 18 requires railway undertakings to provide other assistance such as refreshments and hotel accommodation.
- 3.189 This section evaluates the implementation of these rights and obligations. In addition, we discuss some specific issues where there are variations in how railway undertakings implement these requirements:
- provision of compensation to season ticket holders;

- how compensation is paid; and
- treatment of ‘force majeure’.

Rationales for policy

3.190 As discussed above, the actual policies applied by a railway undertaking may reflect either the Regulation, national law, government policy, or the policy of the railway undertaking. Table 3.21 below shows the basis of the various railway undertakings’ policies in relation to Articles 16-18. Many of the Member States have granted exemptions for domestic services from some of the provisions of Articles 16-18 but even where they have granted exemptions, there are some international services subject to the Regulation; this table therefore focuses on the services which are not exempt.

TABLE 3.21 RATIONALE FOR RAILWAY UNDERTAKING POLICIES: DISRUPTED JOURNEYS

Railway undertaking	Rationale for policy
ČD	<ul style="list-style-type: none"> ■ Most policies (for international services) based on Regulation ■ Railway undertaking policy more generous for rerouting
CFR Calatori	<ul style="list-style-type: none"> ■ Regulation applies to international services ■ Provisions for domestic services based on railway undertaking policy and national law, but less generous than the Regulation
CP	<ul style="list-style-type: none"> ■ Railway undertaking policy more generous for compensation and rerouting ■ No provisions for assistance for domestic routes; for international, based on Regulation
DSB	<ul style="list-style-type: none"> ■ Railway undertaking policy based on the Regulation for most areas ■ National law determines policy in some areas, where this is more generous (for example compensation for consequential damages)
DB	<ul style="list-style-type: none"> ■ Railway undertaking policy based on the Regulation for most areas ■ Rights to rerouting defined in national law, which is more generous than the Regulation
Eurostar	<ul style="list-style-type: none"> ■ Railway undertaking policy based on the Regulation for most areas ■ More generous compensation available as a matter of railway undertaking policy if the passenger accepts a voucher for an alternative journey, instead of monetary compensation
LG	<ul style="list-style-type: none"> ■ Railway undertaking policy based on the Regulation for most areas
MÁV Start	<ul style="list-style-type: none"> ■ Compensation: covered by more generous Conditions of Carriage ■ Assistance/Rerouting: domestic services exempt; international services covered by Regulation
NS	<ul style="list-style-type: none"> ■ Policies on compensation determined by concession contracts, and are more generous than the Regulation. National law determines that the concession contracts must address these issues. ■ Railway undertaking policy based on the Regulation for most areas
ÖBB	<ul style="list-style-type: none"> ■ Railway undertaking policy based on the Regulation for most areas where not exempt

Railway undertaking	Rationale for policy
	<ul style="list-style-type: none"> Compensation provisions based on national law for season tickets, and the Regulation otherwise
PKP Intercity	<ul style="list-style-type: none"> Railway undertaking policy based on the Regulation to the extent it applies, except with respect to rerouting for which the railway undertaking policy is non-compliant
RENFE	<ul style="list-style-type: none"> National law on compensation in cases of disruption more generous than the Regulation, and for most routes, railway undertaking policy more generous than national law For other provisions railway undertaking policy based on the Regulation (where compliant)
SJ	<ul style="list-style-type: none"> Railway undertaking policy based on Regulation
SNCB	<ul style="list-style-type: none"> Railway undertaking policy defined in concession contract with the Belgian State. In some respects (particularly compensation) this is more generous than the Regulation requires.
SNCF	<ul style="list-style-type: none"> Railway undertaking policy determines offer for domestic services, as full exemption, but in line with Regulation
Thalys	<ul style="list-style-type: none"> Railway undertaking policy based on Regulation
Trenitalia	<ul style="list-style-type: none"> Railway undertaking policy based on the Regulation for most areas Railway undertaking policy on rerouting more generous than the Regulation requires
VR	<ul style="list-style-type: none"> Railway undertaking policy based on the Regulation for most areas National law determines policy where there are exemptions (Helsinki suburban services) and where it is more generous (compensation for consequential damages, no exemption for force majeure) Railway undertaking policy determines compensation for season ticket holders

Policies on providing assistance and compensation

- 3.191 Articles 16-18 of the Regulation specify that in the case of long delays, missed connections and cancellations, railway undertakings must provide passengers with a choice between rerouting and reimbursement, plus compensation and assistance such as refreshments and (if the passenger is stranded overnight) hotel accommodation. In order to assess the implementation of this requirement, we requested information from railway undertakings on their policies regarding reimbursement, rerouting, compensation and assistance. Overall, on the basis of the information available we found implementation of these requirements to be good, and there was no evidence of deliberate or systematic non-compliance, but we identified specific issues with specific railway undertakings.
- 3.192 While all of the railway undertakings reviewed stated that they would offer reimbursement in the case of delays of over an hour, we identified some issues with regards to the requirement to offer rerouting. Two of the 18 railway undertakings reviewed only offer rerouting via their own services, and will not use other modes or operators, meaning that in the event of a major service interruption, passengers could be stranded until the railway undertaking is able to

offer a service again. Although the Regulation is not specific as to whether it is necessary to offer rerouting on other operators' services, consistent with the view the Commission has taken on Regulation 261/2004 we interpret a complete refusal to offer rerouting via other operators as a violation of Article 16, which states that the passenger must be offered comparable transport conditions to arrive at their final destination at the earliest opportunity.

- 3.193 We also identified issues with implementation of this requirement by some of the other railway undertakings:
- One operator did not offer rerouting, and stated that passengers would be expected to continue their journey by other means and then claim for compensation to cover the costs;
 - Another operator will only offer rerouting after a delay of two hours, whereas the Regulation states that this should be offered after an hour.
 - A further operator places restrictions on the rerouting offered, stating that a replacement journey must be taken within one week, whereas the Regulation states that it should be at the passenger's convenience.
- 3.194 However some other railway undertakings state conditions which are more generous to passengers than required by the Regulation:
- One offers a choice between reimbursement and rerouting for a delay of any length; and
 - Another permits passengers to reroute after a delay of 20 minutes.
- 3.195 Several of the railway undertakings interviewed for this study felt more clarity was required on the interpretation of 'comparable transport conditions' in Article 16(b). There was a variety of different interpretations of this requirement:
- 14 railway undertakings stated that they would use buses.
 - 10 stated that they use taxis.
 - 2 stated that they would not reroute via other railway undertakings.
 - Only one stated that it would only reroute by train.
 - One stated that it would offer flights (in exceptional circumstances).
- 3.196 In addition, not all railway undertakings will reroute passengers via high speed services when a conventional route is suspended; they consider high speed and conventional services are not 'comparable transport conditions'. Two operators stated that rerouting via rail was not possible when service on a route was suspended: in one case this was due to the geography of their national rail network, and in another case because it was the sole railway undertaking.
- 3.197 Regarding compensation, all of the railway undertakings reviewed stated conditions which are compliant with the Regulation, however information regarding this was not to be found on the websites of three of the operators. Several offer conditions which are more generous to passengers:
- DSB offers better compensation than stated in Article 17 for domestic travel (e.g. 25% of ticket price refunded for delays over 30 minutes).
 - NS gives a full refund for any delay over 60 minutes.
 - CP offers compensation of 100% of the ticket price for delays over 180 minutes.

- SNCB offers compensation of 100% of the ticket price for delays over 60 minutes.
 - RENFE offers various levels of compensation depending on the service on which the delay occurred. 100% compensation is paid for any delay over 5 minutes on the Madrid - Seville high speed line, whereas on local services 50% compensation is paid for any delay over 1 hour. 100% compensation is paid after 90 minutes on all domestic services, whereas on international services compensation is offered at the rates required by the Regulation.
- 3.198 Eurostar, Thalys and SJ also offer passengers a choice between a cash refund and vouchers for use on their services. In these instances, the value of the vouchers is greater than the value of the cash compensation alternative.
- 3.199 We found that implementation of the requirements in Article 18 to provide assistance to passengers was less good, and we note that Member States have adopted relatively extensive derogations from this requirement. One operator did not meet the requirements of the Regulation to provide refreshments in the case of long delays, since they do not have any policy to provide refreshments. Most of the remaining operators reviewed stated that they would offer food after a delay of more than an hour, but one stated that only water would be provided after 1 hour, while food would be provided after 2 hours of delay (and they informed us that the value of this is limited to €7). A key issue here is that rail delays often occur when the train is between stations, and therefore refreshments will not be available unless supplies are available on the train; this contrasts with the air transport sector, where delays usually occur when the passengers are at the airport and therefore facilities are available.
- 3.200 Three railway undertakings restrict the maximum values they will pay for hotel accommodation or travel arrangements, where no such restriction is permitted by the Regulation: two limit the price of accommodation to €80, and another to €20; and one also imposes a limit on the cost of local transport (€40). One operator had no policy regarding provision of accommodation and local travel. Twelve of the railway undertakings reviewed comply fully with the Regulation on this point.

Compensation for season ticket holders

- 3.201 Article 17(1) allows calculation for season ticket holders to be calculated on the basis of whether there are recurrent delays to the service, and in accordance with the policy of the railway undertaking, rather than the fixed compensation rates specified for other ticket holders.
- 3.202 There are various approaches to compensation for season ticket holders. The most common approach is to provide compensation on the basis of a pro-rata calculation which takes account of the number of days the season ticket is valid for, and the number of those days on which there was a delay in excess of a pre-defined threshold on the route for which the season ticket is valid. This is the policy of six of the railway undertakings reviewed. Of the remaining railway undertakings reviewed:
- Two railway undertakings provide a flat rate of compensation per delayed service;

- One railway undertaking calculates the compensation payable on the basis of how many percentage points overall punctuality was below target over the period of the season ticket;
- One railway undertaking refunds 10% of the cost of a season ticket in any month in which punctuality falls below 90%; and
- One railway undertaking said that it calculates compensation on a case by case basis.

Means for payment of compensation

- 3.203 Almost all of the operators reviewed provided compensation in the form of vouchers or bank transfers (with the choice being down to the passenger) and claimed to do this within one month of receipt of a complete application for compensation. Two operators stated that the process could take up to three months during busy periods, but that customers would be informed of this within one month.
- 3.204 In five cases, operators had a default method of providing compensation, with passengers required to specifically ask for any of the alternative means available. Two offered vouchers by default, with passengers able to request bank transfers, whereas three provided cash by default, with passengers able to request vouchers. Three operators offer postal orders as a means of receiving compensation. Two do not offer vouchers as compensation, and therefore always provide bank transfers. Another railway undertaking only offers vouchers as compensation for its domestic services (which are exempt from Article 17), but will offer cash for international passengers.

Force majeure

- 3.205 As discussed below, a key issue that stakeholders believed was unclear in the current Regulation was in what circumstances force majeure could be used as a reason for not fulfilling their obligations. The Commission has interpreted the Regulation as meaning that force majeure can be used to exempt operators from paying monetary compensation but not from any other obligations. There are also differences in how force majeure is defined.
- 3.206 Most of the railway undertakings reviewed stressed that they would not curtail rights in all circumstances of force majeure, but that they reserved the right to do so when they saw fit. 13 of the 18 operators interviewed for the study reserved the right not to pay monetary compensation in cases of force majeure, but would not limit other rights, in line with the interpretation of the Commission. The exceptions to this were as follows:
- Three operators said that they would consider using force majeure in future, but have not yet established which rights they would consider curtailing;
 - One operator restricts the right to refunds as well as compensation for force majeure;
 - One operator would also restrict any payments for loss or damage to luggage that had been handed over to them; and,
 - One operator has no policy on this.
- 3.207 Many of the operators noted that they were waiting for the decision of the European Court of Justice in the case between ÖBB and the Austrian NEB. ÖBB are

appealing a ruling by the Austrian NEB that it cannot use force majeure as a reason not to pay compensation.

- 3.208 A further issue is that the definition of force majeure is not clearly specified in the Regulation. It is however referred to in the General Conditions of Carriage for Rail Passengers developed by CIT (known as the GCC-CIV/PRR¹³), which are used as a base for the conditions of carriage all member railway undertakings of the CIT. Many railway undertakings follow paragraph 9.5 of the GCC-CIV/PRR, which states:

“9.5.2 In addition, carriers are relieved of liability for delay sustained (point 9.2 above) as well as for non-continuation of the journey the same day (point 9.4 above), if passengers were informed of possible delays before buying their tickets, or if when continuing their journeys by an alternative service or route, the delay on arrival at their destinations is less than 60 minutes, or if the event was due to:

a. circumstances not connected with the operation of the railway 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. 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; the infrastructure manager and other railway undertakings using the same railway infrastructure are not to be considered as third parties;

d. limitations in transport services as a result of strikes of which passengers were appropriately informed.”

- 3.209 Several railway undertakings also defined the circumstance not connected with the operation of the railway referred to 9.5.2a. These could include natural disasters (including floods), extreme weather conditions, police investigations, fires affecting railway infrastructure, strikes, terrorist threats, sabotage, demonstrations, service suspended by official order, blocking of the railway, illness and unauthorized alarm use. In contrast, some railway undertakings did not define the circumstances further than ‘force majeure’ or a similar undefined term, such as ‘severe circumstances’.

- 3.210 One railway undertaking noted that in most cases of major service disruption it is difficult to establish precisely which parties are responsible; in many cases several of the railway undertaking, infrastructure manager, station manager and third parties may simultaneously have some responsibility. Another railway undertaking stated that it would consider restricting payment of compensation on the basis of force majeure, but felt that the term was poorly defined in legislation.

Views of other stakeholders

- 3.211 We discussed with consumer representatives and NEBs how effectively railway undertakings had implemented their obligations under the Regulation. Although NEBs generally believed that railway undertakings had implemented these

¹³ <http://www.cit-rail.org/en/passenger-traffic/cit-products/>

obligations, in some cases the NEBs had limited information from which to draw conclusions, due to the low number of complaints and inspections. The consumer organisations that took part in our study had less favourable views; the most significant problem raised was a lack of information for passengers on the assistance available to them, with passengers often not being told about rerouting possibilities. In these instances, they considered that the published policy of the railway undertakings was not successfully implemented, and passengers were often simply left to wait for the next available train.

- 3.212 Another area of concern for consumer organisations was that railway undertakings were very reluctant to reroute passengers via high speed services when these were available. Consumer organisations felt that the requirement to offer rerouting at the earliest opportunity should necessitate railway undertakings providing rerouting via high speed services where appropriate; however, railway undertakings indicated to us that their understanding of the requirement to offer rerouting via “comparable transport conditions” was that passengers did not have a right to rerouting via a more expensive service.

Carriage of bicycles

- 3.213 Article 5 of the Regulation states that railway undertakings shall allow passengers to bring bicycles on trains for an appropriate fee, where they are easy to handle, where they do not affect the service and where the rolling stock permits. It also requires pre-journey information on access conditions for bicycles to be provided.
- 3.214 All 18 railway undertakings reviewed provided pre-journey information on the conditions under which bicycles will be carried. Since the Regulation allows railway undertakings not to carry bicycles where they consider it impractical to do so, the requirement in relation to bicycles is not very onerous and all of the operators that specify their policy seem to be compliant.
- 3.215 As the Article gives railway undertakings considerable flexibility about their policy on bicycles, these differ significantly between railway undertakings. The majority do allow carriage of bicycles, including on long distance trains, but for a fee which can be up to €36. However, some of the railway undertakings do not allow carriage of non-folding bicycles at all, and one will only carry non-folding bicycles in a special bag with the front wheel removed.
- 3.216 The Regulation only requires bicycles to be carried when the rolling stock permits, and on some (particularly high speed) trains bicycles must be stored in a specific compartment. Some railway undertakings address this by requiring compulsory registration of bicycles. In the other cases the decision rests with the operator and ultimately the train guard can decide that it is unsafe to carry any further bicycles and can refuse transport for safety reasons or if it adversely affects the rail service. In each of these cases passengers are given a full refund on their tickets.
- 3.217 Although there have been some complaints in relation to the carriage of bicycles (in Germany and Hungary) there are no systematic issues in this area.

Liability of railway undertakings for passengers and luggage

- 3.218 Article 11 of the Regulation sets out that the liability for passenger and luggage are governed by the contents of Chapters I, III and IV of Title IV of Annex 1 (relating directly to the liability of the carrier), as well as Titles VI (Assertion of

Rights) and VII (Relations between carriers) of the same Annex. However, most provisions with respect to liability are defined within Title IV. This section sets out railway undertakings' implementation of these liability provisions.

Liability for passengers

- 3.219 Chapter 1 of Annex 1 defines carriers' liability in cases of death of, or personal injury to, passengers. In particular it states in Article 26 that the carrier is always liable unless:
- the accident was caused by circumstances not connected with the operation of the railway and which the carrier could not avoid;
 - the accident is the fault of the passenger; or
 - the accident is due to the behaviour of a third party which the carrier could not avoid.
- 3.220 In the event of the third bullet point above, the carrier is still liable and will have the right to take action against the third party to cover the payment that it has made to a passenger.
- 3.221 The Annex also defines what the carrier is liable for, and the maximum amounts. Articles 27 and 28 define that the carrier is liable for direct costs incurred, including consequential financial losses of dependents. Article 30 defines that damages shall be determined in accordance with national law, but that any limit on compensation in the event of death or injury must be at least 175,000 units of account (equivalent to €190,000).
- 3.222 Having discussed this issue with the NEBs in each Member State, and reviewed Conditions of Carriage, we have only identified one case where a carrier is not adhering to these requirements. In Romania, Government Ordinance 7/2005 limits the amount of liability to €75,000 per person. In this case it is not operators limiting the liability, but the Member State. This is not compliant with the Regulation.

Liability for luggage

- 3.223 Annex I sets out a number of conditions on the liability of railway undertakings for passengers' luggage. The conditions are different for registered and hand luggage:
- **Registered luggage:** Article 36 defines that there is strict liability for registered luggage. Articles 41 and 42 defines the limit to liability as 1,200 units of account (€1,300) per item for loss or damage to registered luggage if the value has been proven, otherwise 300 units of account (€330).
 - **Hand luggage:** Article 33 defines that the carrier is liable for loss or damage to hand baggage when it is at fault, unless there is also death or injury to the passenger, in which case there is strict liability. Article 34 defines the limit to liability is 1,400 units of account (€1,500) per passenger.
- 3.224 We reviewed the policies of railway undertakings on carriage of luggage as specified in their Conditions of Carriage or equivalent documents, and taking into account information provided in the interviews. Of the railway undertakings reviewed, most stated liabilities for luggage which equalled or exceeded the limits defined in the Regulation; however, three specified limits which were lower, and 5 of the 18 railway undertakings reviewed did not specify in their Conditions any information on their liability for carriage of luggage.

Insurance provisions of railway undertakings

- 3.225 As well as defining liability for damage and injury, Article 12 of the Regulation states that railway undertakings need to be suitably insured to be able to meet any claims. The Regulation does not specify what suitable insurance should mean, and therefore what level of cover (in terms of monetary value) is required. Furthermore, it does not even require insurance, stating that operators can make other suitable arrangements to cover these liabilities. Our understanding is that this is in contrast to Directive 95/18/EC, as modified by Directive 2001/13/EC, which requires that railway undertakings are appropriately insured, or that they are in the process of obtaining that insurance, as a condition for obtaining a licence.
- 3.226 In addition to the licencing requirement, a number of national network statements also identify the level of insurance that an operator must have to be able to book paths on the network.
- 3.227 We reviewed the insurance coverage held by railway undertakings, any minimum requirements for insurance in national law as set out either in the network statement, or in the relevant national legislation that implemented Directive 2001/13/EC (setting out the licencing requirements). In addition to the information we received in the interviews, we have also received further information that has been submitted to the Commission as part of a separate exercise.
- 3.228 Our review showed that all of the operators reviewed for this study had either contracted insurance, or had made alternative provisions, and as a result appear to be compliant with the requirement in the Regulation to have insurance.
- 3.229 However, although Article 12 does require that operators are adequately insured for cover of their liabilities, it does not specify a minimum level. As this requirement is not very specific, a railway undertaking cannot necessarily be considered non-compliant as a result of a low level of coverage. Nonetheless, several railway undertakings had coverage which was so low it is difficult to see how it could be considered as adequate coverage. We discuss in Appendix E below what ‘adequate’ coverage might be considered to mean.
- 3.230 It would be clearer if the Regulation defined what adequate coverage was, to ensure that sufficient provisions were made by operators across the EU. This would be more consistent with Regulation 785/2004 in the air sector, which specifies minimum levels of insurance which air carriers must have to cover their liabilities to passengers and third parties.
- 3.231 Insurance provisions of railway undertakings are discussed in further detail in Appendix E.

Personal security

- 3.232 Article 26 requires railway undertakings, working with other authorities as appropriate, to take adequate measures to protect passengers’ personal security. It does not specify in any more detail what measures are to be taken and therefore it is left to Member States to determine what ‘adequate measures’ are.
- 3.233 We were informed in our stakeholder interviews that this Article has been interpreted in different ways in different Member States, partly because it is not

specific, but also due to asymmetric translation. In particular, there is confusion as to whether it refers to passenger security or passenger safety. For example, in the Netherlands, the main operator interprets this as meaning security, whilst the NEB interprets it as referring to safety and therefore as extending the scope of the Regulation to cover crowding levels (which it considers a safety issue). In Italy, statistics are provided for safety and security complaints together. We discuss this in more detail in the review of the regulation section.

- 3.234 In our interviews, we asked both the NEBs and the main operators questions relating to passenger security. However, we received very little information relating to policies and cooperation with local authorities or complaints for this area. This section provides a summary of the limited information we did receive, but in most cases this is not an issue which NEBs actively address, partly because the Regulation does not define specific requirements, and also because complaints about security issues would usually be addressed to the police rather than the NEB.
- 3.235 We have been provided the following information on railway undertakings' policies in this area:
- **RENFE:** RENFE informed us that it employs about 2,000 security staff in stations to ensure passenger security. Unlike most other European rail operators, RENFE also screens all passenger luggage prior to boarding high speed trains. Of the NEBs interviewed, only the Spanish NEB stated that it carries out checks in stations specifically related to the security of passengers.
 - **Trenitalia:** Trenitalia has opted to supplement local enforcement (undertaken by the Railway Police) with the addition of some State Police on some services as well as private security firms that operate in the main stations. In addition, Trenitalia has a standard screen on its automatic machines that warns of pick-pockets prior to the acquisition of any train ticket.
 - **Eurostar:** Eurostar screens all passengers and their luggage, and is subject to strict requirements to operate from separated, secure platforms, both due to security and immigration rules.
 - **Other UK railway undertakings:** In the UK, all franchised passenger operators have a Police Service Agreement that states that issues relating to security on the network and on trains are the responsibility of the British Transport Police.
 - **PKP Intercity:** In Poland, the railway police has a statutory obligation to protect railway equipment, property and passengers. In addition, certain operators have taken to employing private security guards, due to instances of train drivers being assaulted.
- 3.236 Some NEBs also said that they had had complaints about, or were taking actions with respect to, passenger security. For example, in Romania, there were substantial concerns about passenger security and the NEB has received a total of 5 complaints on this specific issue. The national response to this issue is still on going with a greater police presence in stations to ensure passenger safety. The Netherlands NEB is also currently undertaking an investigation underway in relation to this area and the results will be published soon.
- 3.237 Where NEBs expressed any view about the adequacy of the measures taken by railway undertakings, they usually considered it to be appropriate. For example, the German NEB mentioned that the operators are taking adequate steps to guard passenger security, although there is still room for improvement. The Portuguese

and Lithuanian NEBs stated that operators are taking adequate measures. In Austria and Sweden, the NEBs reported that they are not aware of any significant issues regarding passenger security. The Polish NEB said that it has been planning to investigate this issue, but this has not been done to date.

Complaint handling

- 3.238 Article 27 requires railway undertakings to set up compliant handling mechanisms, and make contact details and working languages widely known to passengers. It also requires railway undertakings to provide a reasoned response to complaints within one month or, where justified, an explanation of when a reasoned reply can be expected (which should not, in any case, be later than three months after the initial complaint was submitted).
- 3.239 This section describes railway undertakings' implementation of the requirement on complaint handling processes, both as described in the information published on their websites, and on the basis of the information provided at the interviews.
- 3.240 In addition to the obligations above, Article 27 requires railway undertakings to publish statistics in their annual service quality report detailing the number and category of received complaints, processed complaints, response time, and possible improvement actions undertaken. We have analysed compliance with this requirement in the section on service quality reports (see 3.251 below).

Provision of information on complaint handling

- 3.241 We found that implementation of the requirement to provide information on the complaint handling process was generally good, although as with other areas of the Regulation, there were some specific issues. All railway undertakings reviewed published at least generic contact details on their websites, and most published specific details on how to make complaints. Several railway undertakings provided a general contact page with a comment form and a telephone number, but nothing which describes the complaints procedure. One operator was found to be non-compliant in this area since they do not have a complaints section on their website. They have a contact page, but this does not mention complaints, nor does it give any detail on complaints policy.
- 3.242 Only one of those reviewed specified which working languages it used as part of its information on complaining (LG). Others do provide the information about which languages they will accept complaints in, but only in their general terms and conditions. This does not fulfil the obligation to make their "working languages widely known."
- 3.243 Most railway undertakings will accept complaints via the internet (either an email or a web form) or via phone. Some operators also accept complaints by post; one operator requires all complaints to be submitted by post.

Complaint handling process

- 3.244 We reviewed the complaint handling processes of the railway undertakings. Almost all operators specified that complaints should be submitted with the original ticket, and when received would be registered in an internal database; an internal investigation would then be undertaken in order to establish whether the complaint should be upheld, and if compensation should be provided. Once this had been established, the passenger would be contacted using the same means

(post, email, etc.) with which they had complained, and any compensation due would be paid.

- 3.245 Some operators did not accept photocopies of tickets for complaint handling purposes, as they believe that this would allow for false claims. This is the policy of two railway undertakings, and was formerly the policy of another, but the NEB intervened to insist that official photocopies could be accepted. Some operators have established a separate customer service centre to process complaints.
- 3.246 We asked railway undertakings how long they took to respond complaints. Most of the railway undertakings that were reviewed had a policy regarding the length of time it would take them to respond. This policy was explicitly in line with the Regulation in all cases bar one, whose policy is to respond to 80% of complaints within 8 days, which does not guarantee that passengers will receive a reasoned reply within a month, although does imply that most would.
- 3.247 However, not all operators specified a policy, instead specifying their average response time. In most cases, this was low enough to suggest that complaints are generally handled within the timeframe specified by the Regulation, however one operator advised that the average time it took to reply was 30 days, which implies that it may not be meeting the requirements of the Regulation.

Statistics on number of complaints received

- 3.248 We requested that railway undertakings inform us how many complaints that they had received relating to the Regulation. However, the data provided by railway undertakings was very varied. Not all had this information available, and some were unwilling to release it for commercial reasons. Where the data was provided, it was not generally possible to distinguish complaints specifically relating to rights under the Regulation. Where this data was available, there was a very large range in the number of complaints received, and this could only partly be explained by different passenger volumes handled by the operators' concerned - for example the main railway undertaking for a large Member State had received approximately 10,000 complaints relating to the Regulation whereas the main railway undertaking for a much smaller State had received almost 15,000.
- 3.249 The large variation in the number of complaints received could be explained by a number of factors: the ease with which passengers can complain, awareness of passenger rights, definition by the operators of what constitutes a complaint, and the number of journeys taken with each operator, will all influence the level of complaints reported. As a result, it is difficult to draw much in the way of conclusions from this data.

Languages in which complaints will be handled

- 3.250 As discussed above, only one railway undertaking complied with the requirement to make the working languages for the complaint process widely known. However, we asked the operators which languages they would accept complaints in. Most railway undertakings handle complaints in their national language, English, and one or more other languages. Many railway undertakings also stated that if they received complaints in other languages, they would try to translate it, and would hope to be able to respond.

Service quality standards

3.251 Article 28 requires railway undertakings to define service quality standards and implement a quality management system, and then to publish on their websites annual reports on their service quality performance. It also specifies that these reports should be published on the website of the European Railway Agency (ERA). Annex III defines minimum issues to be covered by the service quality standards, including rates of punctuality and cancellations; cleanliness; customer satisfaction; and assistance to disabled passengers and PRMs. Article 27(3) also requires that the service quality reports include complaint statistics.

3.252 On request of the Commission, we reviewed all the reports available on ERA's website. In the following sections we present the outcome of our review focusing on the 17 railway undertakings selected for case studies; in addition, we report on our review of other service quality reports published on ERA's website.

Service quality reports

3.253 We found that railway undertakings' implementation of the requirements in relation to service quality reports was extremely poor. Compliance with these requirements was significantly worse than compliance with any other aspect of the Regulation.

3.254 Among the railway undertakings selected for our case studies, only 5 of them complied with the requirement to publish service quality reports on their website and on the ERA website. Of the others:

- three railway undertakings published service quality reports on the ERA website, but not on their own website;
- one railway undertaking published its service quality report on its own website, but not on the ERA website; and
- the remaining 8 railway undertakings reviewed did not publish service quality reports anywhere.

3.255 3 of the 8 railway undertakings that did not publish service quality reports informed us that their annual reports contained the relevant information. However, we found that the annual reports did not contain all of the information that the Regulation requires.

3.256 We reviewed the service quality reports of the 9 railway undertakings that did publish these in some form. We found that only two of these (MÁV Start and PKP) included all the content required by Article 28; we discuss these in more detail below as examples of good practice. The remaining 7 reports were found to be not compliant for three main reasons:

- failure to define standards against which performance should be measured;
- failure to report performance in relevant areas; and/or
- failure to address all areas required by Annex III, which sets out the minimum service quality standards.

3.257 For example, two service quality reports addressed all areas in Annex III, and defined standards where appropriate, but did not report their actual performance against these standards. Three railway undertakings' reports failed to address all areas required by Annex III:

Final Report

- One did not address information and tickets, or cancellations of services;
 - One did not address refunds and compensation; and
 - One did not address customer satisfaction.
- 3.258 Two other service quality reports failed in all three areas mentioned above. They did not adequately define standards, did not report performance in areas that they did address, and did not address all areas required by Annex III.
- 3.259 Of the other railway undertakings whose service quality reports are published on the ERA website, we found that many did not include all of the content required by Article 28. The remaining 7 reports were found to be not compliant, for not addressing all items listed in Annex III, especially as regards customer satisfaction.
- 3.260 However, as discussed above, two of the reports did in our view fully meet the requirements of Article 28 and Annex III, and

3.261 Table 3.22 summarises the information that these reports provide. On the basis of these two reports, we have identified the following elements as good practice:

- set out clear definitions of detailed standards;
- describe systems for monitoring them;
- give results in detail, showing a comparison against any targets and against previous years (where possible); and
- give any appropriate explanation alongside the results.

TABLE 3.22 GOOD PRACTICE EXAMPLES OF SERVICE QUALITY REPORTS

Area	MÁV Start	PKP Intercity
Information and tickets	Details of information systems available on rolling stock. Staff available to provide information and sell tickets, details of staff tasks. Ticket sales options, including yearly numbers of each option. Information available to passengers at stations, and information available to disabled passengers.	Requests for information at stations reports shows different ways of providing information, and what information is available by each. Results of inspections or inventories shown for information provided during journey, timetable and tariff information, ticket buying facilities and staff availability at stations. Details of staff training programme.
Punctuality of services, and general principles to cope with disruptions to services	Overall delay and punctuality ratios by segment. Statement on lack of availability of start-up delay. Data on delay lengths (with statement on changes to IT systems to allow reporting of lengths compatible with Regulation). Total number of missed connections.	Overall delay performance, split by segment, showing average delay, and proportions: delayed in arrival and departure, delayed by 60 and 120 minutes, and with missed connections. Description of contingency plans for disruption.
Cancellations of services	Proportion of full and partial cancellations by segment.	Proportion of cancelled trains, split by domestic/international.
Cleanliness of rolling stock and station facilities	Detailed cleaning schedule sets out tasks and frequencies, for both rolling stock and stations. Statement on inability to record air quality at present. Numbers of toilets and usability, results of survey of toilet facilities (stations and stock).	Detailed cleaning schedule sets out tasks and frequencies, for both rolling stock and stations. Report of proportion of wagons failing internal checks. Process for checking air quality, report of internal checks. Process for cleaning toilets.
Customer satisfaction survey	Details of methodology: both frequent and infrequent travellers surveyed, questions addressed both importance of and satisfaction with issues. Detailed coverage of: travel time, information, security, cleanliness of carriages and stations, and comfort.	Details of methodology: number of passengers surveyed, Ratings of: overall rating, punctuality, information, rolling stock condition and appearance, security and safety, cleanliness of carriages and toilets, standard of stations.
Complaint handling, refunds and compensation for non-compliance with service quality standards	Description of complaint handling procedure. Number of complaints received, reasons for complaints, compensation paid, average response time, any suggestions for improvement. Also how passengers rights are communicated.	Description of complaint handling procedure. Number of complaints received, rate per million passengers, split by complaints and refund requests. Average response time, plans for improvements.
Assistance provided to disabled persons and persons with reduced mobility	Description of possible facilities available. Number of times assistance provided, split between domestic and international.	Description of possible facilities available. Number of times assistance provided, split between domestic and international.

- 3.262 The Commission has developed a set of guidelines¹⁴ to facilitate the publication of the service quality reports and provide an illustrative breakdown of what information could be provided to meet the requirements in Annex III; we discuss this guidance in more detail in section 4 below. The guidelines also recommend procedures and deadlines that railway undertakings should adhere to, and recommend actions the NEB could take to monitor compliance with this aspect of the Regulation. In providing clearer guidelines, the Commission hopes that compliance with this aspect of the Regulation will improve. However, given the large proportion of railway undertakings which have failed to implement the requirements of the existing Regulation in this area, it is not clear to what extent they will follow the recommendations in the more detailed guidelines developed by the Commission.
- 3.263 We also note that the compliance with the requirement to publish service quality reports varied significantly by country, with railway undertakings based in Poland, Hungary and the Czech Republic (including those outside the study sample) performing much more strongly in this respect than railway undertakings based in other Member States. This implies that the role of NEBs in ensuring railway undertakings meet the requirement to publish service quality reports is very important. NEBs could easily have checked whether railway undertakings had complied with the obligation to produce these reports and taken action to ensure that they did; they appear not to have done this. Consequently, implementation of the working group's recommendations regarding the role of NEBs would also be necessary to improve compliance.
- 3.264 It should be noted that our conclusion that the content of the service quality reports is insufficient depends on interpretation of Article 28(2). This states that railway undertakings shall monitor their own performance as reflected in the service quality standards, and that railway undertaking shall each year publish a report on their service quality performance together with their annual report. In our view it is reasonably clear that the words 'service quality performance' relate to the service quality standards defined elsewhere in the Article, but (as discussed below) this could be more specific. It should also be noted that our analysis of service quality reports was undertaken in March-May 2012, and therefore it is possible that there could have been an improvement by the time this report is published.

Quality management and performance monitoring systems

- 3.265 Article 28 also requires railway undertakings to implement a quality management system and monitor their performance, and therefore we asked the railway undertakings about their quality management systems and performance monitoring regimes. However, the information provided was often incomplete - in some cases, operators were unwilling to describe internal processes. A number of operators used ISO 9001 as the basis for their quality management systems. The approach for performance monitoring varied considerably, but included statistical information provided by Infrastructure Managers (IMs), third party surveys, and internal monitoring.

¹⁴ Rail Service Quality Standards and Reports Publication Procedure and Contents

Reporting of complaint statistics

- 3.266 Article 27(3) requires railway undertakings to publish “the number and categories of received complaints, processed complaints, response time and possible improvement actions undertaken” in the annual service quality reports required by Article 28.
- 3.267 We found that implementation of this requirement was also poor. Where railway undertakings have failed to publish a service quality report, it is not possible for them to have complied with this requirement. Of the 9 railway undertakings reviewed that did publish service quality reports, only four complied with the full requirements of Article 27(3). Two railway undertakings reviewed published the number and category of complaints received and processed, but did not detail the response time or possible improvements, as required. One published the number of requests for refunds, rather than the total number of complaints, and also failed to report their response time and possible improvements. Another only publishes the proportion of complaints per passenger, and another does not split complaints by category or give details on response time or possible improvements.

Implementation of the Regulation by new entrants

- 3.268 Most rail services are still provided by the historic national railway undertakings, and therefore these have been the focus of our analysis. However, as discussed in chapter 2 above, we also approached a number of new entrants to discuss how they had implemented the Regulation and any issues that had arisen with it. The information we were able to obtain was limited, but we set out below the information that we could gather from discussions with those three railway undertakings that did respond (Arriva, Westbahn and NTV).
- 3.269 In general, the three operators said that they follow the practice of the main incumbent railway undertakings in their State. The incumbents account for the vast majority of rail services and therefore their practices will determine passenger expectations on these issues; in addition, their practices may be determined by national law or the provisions of concession contracts, which would also apply to new entrants.
- 3.270 We summarise below those areas where the service provided by new entrants differs from that of the incumbents. Overall we have found that there are some cases where the service provided by the new entrants is better, but other cases where it is worse; overall there is no consistent pattern. However, as there are currently relatively few services provided by new entrants, it is too early to reach any conclusions as to whether new entrants’ approach to passenger rights will be better or worse than incumbents’ approach.

Carriage of bicycles

- 3.271 The policies on carriage of cycles are in general not significantly different from the policies adopted by the local incumbents. For instance, neither NTV nor Trenitalia (on its high speed trains) allow non-folding bicycles. However, Arriva’s conditions on some routes in the Netherlands seem to be better than those offered by Dutch incumbent NS, as bicycles are generally carried free of charge. On the northern Dutch lines, however, a €6 bicycle day ticket is required by both Arriva and NS.

Travel information

- 3.272 There has been one significant difficulty in Austria with respect to the implementation of the provisions on travel information by the new entrant. Westbahn was prevented from providing real time information on onward connections by other operators on board its trains as required by the Regulation, as the Austrian infrastructure manager provided real time information only relating to their own operations, on the basis of Directive 2001/14/EC.
- 3.273 Consequently, Westbahn complained to Schienen-Control, and the case was referred to the CJEU, as the decision depended on the interpretation of both the Regulation and Directive 2001/14/EC. The CJEU has not as yet issued a judgement, but on 7 June 2012, the Advocate General issued an opinion that infrastructure managers should be obliged to make real time data on other railway undertakings' trains available in a non-discriminatory manner, in so far as these trains constitute main connecting services. If the same approach is adopted by the CJEU, Westbahn will be able to comply with these requirements of the Regulation.

Information on rights and obligations under the Regulation

- 3.274 Overall, we found that the new entrants provided information on rights and obligations under the Regulation through similar channels, but there was no consistency as to whether the information provided was more or less extensive than for the incumbent railway undertakings.
- 3.275 For example, Arriva Poland has published a link to the EU website on passenger rights on its website; this is less extensive than the information provided by the incumbent PKP Intercity, which also provides information via leaflets, small posters and variable message displays. Similarly, Arriva Netherlands has published information on the Regulation on its website and in its Conditions of Carriage, but the incumbent NS also makes use of brochures and posters, and provides a link to the Regulation on the back of tickets.
- 3.276 NTV informed us that information on passenger rights is available on its website, or (on request) from NTV station or on-board staff. However, it said that in the future leaflets would be provided in stations or handed to passengers as they alight from delayed trains. Trenitalia also provides passenger rights information in ticket offices in the form of leaflets but does not currently plan to provide them on trains if the service is delayed; in this respect the policy NTV plans would represent an improvement over Trenitalia's practice.

Disabled passengers and PRMs

- 3.277 There is also no consistent practice in terms of how provision for disabled passengers and PRMs varies between the new entrants and incumbents.
- 3.278 New entrants often use newer rolling stock, and therefore their rolling stock is more likely to be compliant with the PRM TSI. For example, NTV rolling stock is compliant with the PRM TSI whereas much of the Trenitalia high speed rolling stock is not. Similarly, all Westbahn rolling stock is compliant with the PRM TSI, whereas some ÖBB long distance rolling stock is not. Therefore, there may be less need for PRM assistance to be provided for travel with the new entrants.
- 3.279 However, we have found that the provision of PRM assistance is not necessarily better, and in some cases may be less generous. For example, Arriva Denmark

requires assistance to be booked 48 hours in advance, which is the same as that for the national railway undertaking, but its customer service is only open between 8am and 3pm, a significant limitation. In Austria, passengers can buy tickets on-line or on the train for travel with Westbahn, but reservations (including for PRM assistance) can only be made on-line; unlike ÖBB, Westbahn does not allow reservations by telephone. In Italy, PRM assistance in stations is provided by RFI, and therefore the conditions for assistance are harmonised; however, for travel with NTV, PRM assistance can only be booked via the call centre, while on Trenitalia services, this can also be done in stations.

Delays and cancellations

- 3.280 We have also compared the policy on delays and cancellations and again there is no consistent pattern.
- 3.281 In Austria, in most respects Westbahn applies the same policies as ÖBB. In some respects its policy is better, because (unlike ÖBB) Westbahn does not apply the minimum amount of €4 below which it will not compensate passengers. However, in several other respects its policies are less generous.
- 3.282 In contrast, NTV's policy on compensation for delays is better than Trenitalia's. NTV credits passengers automatically with compensation for delays, without passengers having to request compensation. This is credited to their ticket code, and the passenger can then request that this is converted into cash or can use it to buy a new ticket. Trenitalia does not provide any automatic compensation. In addition, NTV provides compensation for some circumstances beyond those the Regulation requires, whereas Trenitalia does not.

Conclusions: Implementation of the Regulation by railway undertakings

- 3.283 We found that there was a generally positive approach to implementing the requirements of the Regulation, and as noted above, neither consumer representatives nor NEBs indicated that there was severe, deliberate or systematic non-compliance with these requirements. However, there are clearly some areas for improvement.
- 3.284 Of the railway undertakings and station managers reviewed for this study, we have identified the following main conclusions about their implementation of the requirements of the Regulation:
- We identified some issues with how all railway undertakings had implemented the Regulation, but there was significant variation between them; we identified fewer issues with implementation by DB than with any other railway undertaking.
 - Compliance was particularly good with the requirements on provision of information to passengers on board. Compliance was also good with the requirements on provision of space and access for bicycles (although the requirements regarding bicycles in the Regulation are very limited; see 3.213).
 - In contrast, compliance was extremely poor with the requirement to publish service quality reports; most railway undertakings do not publish these at all, and where they are published, the content of the report is usually not compliant with the Regulation. Compliance was also poor with the requirement to provide information on passenger rights when booking tickets: of the 18

railway undertakings reviewed for the study, only 2 provided information on passengers' rights during their online ticket booking process.

- Most railway undertakings had also implemented the requirements relating to provision of assistance for PRMs, and even where there were exemptions, most railway undertakings apply policies which are similar to the Regulation, in some cases due to requirements of national law. We have identified some specific issues with how this implemented by some railway undertakings (for example, several railway undertakings require notification periods longer than 48 hours), but there are no particular Articles with which there is widespread or systematic non-compliance. PRM representative organisations that contributed to the study generally expressed positive views on the implementation of these requirements.
- Most railway undertakings had implemented the requirements to offer compensation and reimbursement in cases of delays and cancellations, except where there were exemptions, and at least in terms of their formal policies. However, the implementation of the requirement to offer assistance such as refreshments was poorer, and there are also some issues with the requirement to offer rerouting, partly due to issues of interpretation. Consumer representatives and some NEBs that contributed to the study expressed some concerns about railway undertakings' implementation of these requirements, and in particular noted that in some cases insufficient information was given to passengers about their rights. Nonetheless, no stakeholders indicated that there was severe, deliberate or systematic non-compliance with these requirements.

- 3.285 In addition, we have concerns about the manner that insurance provisions have been applied in two Member States; in our view the railway undertakings in these States have not made sufficient provision to cover potential needs if a major event occurs that needs to draw on these funds. This issue is discussed in more detail in appendix E.

Part 3: Issues with the Regulation

Introduction

- 3.286 The Regulation is a complex document with many terms requiring interpretation by the parties who must implement it. We have undertaken a review of the text of the Regulation to identify any areas where there may be issues with interpretation. We also discussed with stakeholders in the interviews whether any elements of the Regulation were unclear, in some cases they also informed us of areas which they thought were not adequately covered by the Regulation. The results of this analysis are set out below, arranged by Article; if an Article is not referred to, then no significant issues were identified with it or raised by stakeholders.
- 3.287 In addition, we have reviewed in depth the consistency of the main text of the Regulation with the Annex. This is discussed below.

Review of the main text of the Regulation

General comments

- 3.288 A number of stakeholders (generally NEBs and consumer organisations) believed that the Regulation should provide compensation for passengers who experience poor service quality, as well as poor operational performance.

Article 2

- 3.289 Recital 26 states that urban, suburban and regional services are different in character from long-distance services, and that therefore some exemptions from the Regulation should be permitted for these services. Where local services are international (for example, between Freilassing and Salzburg), it is not entirely clear how or whether they could be exempted - for example, whether granting an exemption for them would require agreement between all States involved, or just the Member State responsible for the railway undertaking that operates the service concerned.
- 3.290 In addition, there are a number of long distance trains that cross borders between Member States but only as far as the first station (for example, trains from France to Irún or Portbou in Spain), to enable connections on to the network of the adjacent State. Although it appears to us that these are international trains for the purpose of the Regulation, they do not appear to be treated as such by the railway undertakings or NEBs for the Member States concerned. We discuss in section 4 below whether exemptions should be possible for these services.

Article 3

- 3.291 There are a number of definitions in the Regulation where there are issues, particularly regarding consistency with definitions in other legislation:
- The definition of ‘carrier’ is different to that used in CIV: it does not allow for the possibility of the passenger having a contract with an entity which is not a railway undertaking. This could potentially cause issues with multi-modal transport, as it is not clear what parts of such tickets would be covered by the Regulation.
 - The definition of ‘ticket vendor’ also leads to ambiguities, as it covers retailers which conclude transport contracts ‘on their own account’. Such retailers would also be covered by the definition of ‘carrier’.
 - The definition of ‘disabled person or person with reduced mobility’ is different to that in the PRM TSI, and since the PRM TSI is referred to in Article 21, this could lead to ambiguities. However, this issue is to be addressed as the Commission has informed us that the definition in the PRM TSI is to be revised and will be made consistent with the Regulation.
- 3.292 In addition, the term ‘missed connection’ is not defined.

Article 5

- 3.293 No stakeholders interviewed for this study considered this Article to be unclear. However the organisations representing cyclists asked whether the intention of the Regulation was to impose any requirements relating to carriage of bicycles on railway undertakings, as the wording of Article 5 enabled railway undertakings to avoid making any changes to their policies. No reference to bicycles is made in the

Recitals to the Regulation, so it is not possible to compare Article 5 against the broader intentions of the Parliament relating to carriage of bicycles.

Article 9

- 3.294 Article 9 was also believed to be clear, however one NEB argued that in Article 9, on ticket sales, the Regulation should stipulate that railway undertakings and ticket vendors may not discriminate on the basis of nationality or residence when selling tickets. Such a prohibition would be equivalent to the prohibition on price discrimination when selling air tickets, defined in Regulation 1008/2008.
- 3.295 This can be an issue at present. For example, at present passengers based in the UK are offered more destinations on the Eurostar website than passengers based elsewhere, and NS only offers reduced fares to passengers with Dutch bank accounts. Although Eurostar informed us that it did not price discriminate, the prices of at least some of its tickets do vary depending on whether they are purchased through the UK or French version of their website. For example, we found when purchasing an example journey that the price of the same class of ticket on the same service from London to Paris was €97.50 on the French website, and £89 (at the time, €110) on the UK website.

Article 16

- 3.296 Article 16 of the Regulation only applies when a delay of more than 60 minutes is expected ‘in the arrival at the final destination under the transport contract’. If a journey involves a connection, it is not necessarily clear whether there is a single contract. Often, railway undertakings will issue separate tickets for each segment, even when they market a journey opportunity which depends on a connection. The Regulation does not specify whether operators must regard multiple tickets as one or more contracts of carriage and NEBs informed us that many operators choose to regard multiple tickets as multiple contracts of carriage. If the connecting point is considered the final destination for the purposes of one contract, this might mean that passengers do not have a right to be rerouted.
- 3.297 The Austrian NEB has an informal agreement with ÖBB to treat multiple-segment tickets as through tickets, but this is not formal or clear. There is a particular issue where the services are provided by more than one railway undertaking.
- 3.298 In addition, the fact that the delay is ‘more than’ rather than ‘at least’ 60 minutes means that, where the service is hourly, under this Article passengers may not have a right to be rerouted when one service is cancelled or when they miss a connection into an hourly service. This effectively means that such passengers only have a right to be rerouted when a delay of 120 minutes was expected. The use of ‘more than’ rather than ‘at least’ 60 minutes is also inconsistent with Article 17, where compensation for delay is granted after a delay of at least 60 minutes.
- 3.299 Several NEBs believed that the term “comparable transport conditions” was not sufficiently clear. As discussed above, some railway undertakings interpret it to allow them to refuse access to a high speed train to passengers whose non-high speed connection has been cancelled or delayed, claiming that obligatory reservation and a higher speed are not “comparable transport conditions”. This differs from the previous CIV (1980 version, article 16) or the current CIV (1999 version) combined with the previous GTC-CIV (2006 version, developed by the CIT),

where this term does not appear. Under this policy, passengers could be rerouted with a high speed train regardless of their original ticket.

- 3.300 In addition, the term was translated into Dutch in two different, non-equivalent ways: *vervoersvoorwaarden* (conditions of carriage) and *vervoersomstandigheden* (transport circumstances). There is a similar issue with the translation into German, where the term is *Beförderungsbedingungen* (conditions of carriage).
- 3.301 One operator believed that the phrase “at the earliest opportunity” was not clear, while a Polish operator believed that “journey no longer serving any purpose in relation to the passenger’s original travel plan” was not clear.

Article 17

- 3.302 As discussed above in relation to Article 16, there is an issue as to how connecting journeys should be treated with respect to this Article. In some ways this Article is less clear, because it only refers to ‘delay’, not to where that delay occurs - on departure or at the destination, and if it is at the destination, whether it is at the destination of the train concerned or the final destination.
- 3.303 The use of “force majeure” as a reason for restricting the rights of passengers is not clear. Firstly, the ability of railway undertakings to do this is disputed, and currently subject to a reference to the CJEU; see 3.325 below for a discussion of this point. Secondly, there is a lack of clarity around which circumstances should be regarded as “force majeure”: we were informed that some operators declare certain types of weather (snow fall, temperatures above 30°) as force majeure, although these conditions occur every year. One operator noted that the scope of exceptional circumstances is different in the Regulation and in CIV. Thirdly, it is not clear which rights railway undertakings are permitted to curtail under such circumstances.
- 3.304 Several other issues relating to payment of compensation were raised:
- It is also not clear how responsibility for providing assistance or compensation for a journey operated by multiple operators should be divided between them (for example, where no operator is responsible for a delay of over 60 minutes, but the total delay is over 60 minutes). NEBs informed us that this lack of clarity has resulted in issues for some passengers, where none of the railway undertakings involved has taken responsibility for their claims.
 - It is also not clear how responsibility for tickets sold by one carrier but operated by another should be allocated; indeed, the Regulation specifies in Article 27(2) that passengers may complain to “any railway undertaking involved”. An example was given of a complaint regarding Interrail tickets (which included specified journey details), where both the operating railway undertaking and the undertaking which has sold the ticket refused to accept responsibility for compensation for a delayed service.
 - Some NEBs did not believe that the text in the Regulation regarding payment of compensation for season tickets was clear.
 - The Polish translation of the Regulation uses two different words for the term ‘compensation’, which grant different rights to passengers: one allows for only the actual damage caused to the passenger (e.g. the price of the ticket), while the other includes consequential losses (any losses incurred by the passenger as a result of the delay). It is not clear which should be used.

- Some railway undertakings have a policy of requiring passengers to present their original ticket to obtain payment of compensation; this may cause problems for passengers who also require the originals for other purposes (such as tax declarations or claiming expenses). The Regulation does not make any reference to this point.

Article 18

- 3.305 As for Articles 16 and 17, there is an issue with missed connections, although again the wording of this Article is slightly different. There is a lack of clarity around when assistance should be provided. Article 16 defines the choices that a passenger must have where a delay in arrival at their final destination is expected to be more than 60 minutes; Article 18 defines the delay after which passengers are entitled to assistance as “a delay in arrival or departure”, but does not specify whether this is a delay to the passenger or the service. If it were interpreted as delay to the service, then a passenger who had missed a connection could be denied assistance despite having experienced more than 60 minutes of delay.
- 3.306 In addition, no reference is made to reimbursing passengers where they incur costs to arrange assistance or alternative transport services for themselves (particularly if the railway undertaking has not provided these services when it should have done). For example, it is not clear what compensation railway undertakings should provide for taxi costs incurred by passengers.
- 3.307 Article 18(1) does not allow for unstaffed stations: it states that passengers shall be kept informed of the situation as soon as information is available, but does not state what the railway undertaking is required to do where a passenger is delayed at an unstaffed station. One railway undertaking was concerned that an overzealous NEB could use this Article to require cost-ineffective infrastructure changes.
- 3.308 Whilst the Regulation is not unclear on this point, a general issue raised by some stakeholders is that, in rail transport, delays often occur when the passenger is already on the train, and potentially between stations. This is a contrast to the situation in air transport, when delays usually occur when the passengers are at the airport and have not yet boarded. It is difficult to arrange assistance such as refreshments when passengers are on board a train, unless they were available on the train anyhow.

Article 21(1)

- 3.309 Article 21(1) requires railway undertakings and station managers to ensure that stations, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility, through compliance with the PRM TSI.
- 3.310 Most stakeholders interpreted this Article as emphasising the requirement to comply with the PRM TSI, without placing any additional obligations on them. However, some NEBs and operators were unclear about the interpretation of this Article, considering that it could be interpreted to mean that all railway facilities (and rolling stock) must be made immediately compliant with the PRM TSI, rather than just new or renewed facilities. This was cited by some Member States (for example, Poland and Romania) as a rationale for granting an exemption to this Article. However, we understand that the Commission interprets this to mean that

compliance is only required when upgrading or renewing infrastructure and rolling stock.

- 3.311 This Article could also be interpreted as providing a means by which passengers, in addition to national authorities, may be able to take action against railway undertakings and station managers for non-compliance with the PRM TSI. The PRM TSI defines an obligation for Member States to define specific rules on accessibility, but does not provide a means for passengers to claim directly against railway undertakings; only national authorities in the Member States could take action as a consequence of failure to implement these requirements by railway undertakings. By including this requirement in the Regulation, it would in theory be possible for a passenger to pursue a court action against a railway undertaking or station manager for failing to comply with the PRM TSI. This could provide a method for improving compliance where national authorities were not sufficiently enforcing the PRM TSI and does at least provide a means of individual redress with respect to the provisions on accessibility.

Article 25

- 3.312 Article 25 states that if a railway undertaking is liable for damage to mobility equipment, then no financial limit may be applicable; there are also references to liability in the Annex (see 3.333 below). Article 22 defines that it is the station manager which is responsible for provision of assistance at stations. The station manager may be the infrastructure manager but is not necessarily the railway undertaking or carrier, so it is not clear that the station manager is covered by either Article 25. Therefore, if mobility equipment is damaged in the course of provision of assistance at stations, it is not clear what liability the station manager or railway undertaking should have. This issue does not arise if it is the railway undertaking that provides the assistance, as is the case in some Member States.

Article 26

- 3.313 In translations of the Regulation into several languages (for example, both Dutch and German), the term 'personal security' has the meaning 'safety' rather than 'security'. This changes the scope of action of the NEB from the definition in English. In addition, the intended scope of the term in English is not clear.

Article 27

- 3.314 No issues with the clarity of Article 27 (on railway undertaking complaint handling mechanisms) were raised, however a railway undertaking believed that it should include a deadline within which passengers must submit their complaints, in addition to a deadline for the operator to respond by.

Article 28

- 3.315 As discussed above, our review concluded that implementation of this requirement was extremely poor. Although we consider this requirement to be reasonably clear, Article 28(2) could be more specific that the published report should cover all of the items listed in Annex III, and Annex III could specify in more detail the metrics to be reported.

Article 32

- 3.316 One NEB believed that requiring sanctions to be 'effective' (Article 32) was not sufficiently well defined, and that some examples would be helpful.

Review of the consistency of the Regulation with the Annex

- 3.317 Recital 6 to the Regulation specifies that rights for rail passengers should build on the provisions of the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV), as established by the Convention Concerning International Carriage by Rail (COTIF), which are set out in Annex I to the Regulation. Articles 4, 11 and 15 of the Regulation specify that subject to the provisions within the relevant sections of the Regulation, the performance of the transport contract and the liability of the railway undertaking should be regulated by the provisions of these Uniform Rules.
- 3.318 Therefore, we have reviewed the extent to which the provisions defined in the Uniform Rules in the Annex are consistent with the provisions of the main text of the Regulation. This analysis shows that there are potentially issues in three areas:
- liability for compensation and assistance in the event of travel disruption;
 - liability for death and injury of the passenger in cases where the operator was not responsible for this; and
 - liability for damage to mobility equipment.
- 3.319 This section provides an independent, non-legal, view of this but it should be noted that a Court might ultimately take a different view on any of these issues. As discussed in more detail below, there has been a reference to the CJEU relating to the apparent inconsistency between the provisions for compensation and assistance in a case brought by the Austrian national rail operator. The CJEU is unlikely to rule on this case until 2013.
- Liability for death and injury*
- 3.320 Article 13(1) of the Regulation defines that in the event a passenger is killed or injured, the railway undertaking must make an advance payment to meet immediate needs, and Article 13(2) defines that this must be at least €21,000 in the event of death. Article 13(3) defines that this payment cannot be returned except where the passenger was partly responsible for the damage or the person who received compensation was not the person who was entitled to it.
- 3.321 This appears not to allow for any other exemption, for example based on whether the railway undertaking concerned was responsible for the death or injury to the passenger. This seems to conflict with Chapter I of Title IV of the Annex. Article 26(2) of the Annex defines that the carrier shall be relieved of liability where:
- the accident was caused by circumstances not connected with the operation of the railway;
 - the accident was the fault of the passenger; or
 - the accident was due to the behaviour of a third party which the carrier could not avoid.
- 3.322 Of these points, only the second exemption is allowed for in the main body of the Regulation. This appears inconsistent and implies that in the event a passenger was killed due to circumstances not connected with the operation of the railway or due to the fault of a third party, the railway undertaking would be obliged to

provide an advance payment of €21,000, even though the Annex defines that it would have no liability.

- 3.323 Since Article 11 of the Regulation defines that the Annex only defines liability ‘subject to the provisions of this Chapter’, it could be considered that there is no conflict, because the Regulation should always take priority. However, this would not be entirely consistent with the position the Commission and NEBs have taken with respect to compensation in cases of delays and cancellations (although as discussed below there is a slightly different rationale for this).
- 3.324 A further potential issue is that Article 13(1) of the Regulation states that ‘the railway undertaking as referred to in Article 26(5) of Annex I’ shall provide the advance payment. However, Article 26(5) only refers to liability in the case of successive carriage or substitute carriers, and so this could possibly be interpreted not to require an advance payment in the case of a contract with a single carrier. It is not clear why this Article refers to Article 26(5) of the Annex, as a simple reference to Article 26 of the Annex would appear to have been sufficient. Although it appears clear what the intention of this Article was, this reference could potentially be a source of dispute.

Liability in the case of delays and other disruption

- 3.325 Articles 16, 17 and 18 of the Regulation define the obligations of the carrier in the case of delays, missed connections and cancellations. In particular:
- Article 16 provides a right to a choice between reimbursement, rerouting, and rebooking for a later date, if the delay in arrival at the final destination is reasonably expected to be more than 60 minutes;
 - Article 17 provides a right to a compensation of 25% of the ticket price for delays of 60-119 minutes, and of 50% of the ticket price for delays of 120 minutes or more, unless the ticket is reimbursed; and
 - Article 18 provides a right to assistance, including refreshments and also hotel accommodation if the passenger is stranded overnight.
- 3.326 The main text of the Regulation does not provide any exemption from the requirements of these Articles based on whether or not the carrier is responsible for the delay, cancellation or missed connection.
- 3.327 However, Chapter II of Title IV of the Annex to the Regulation also defines carriers’ liabilities in the event of delay, cancellation or missed connections. Article 32(1) of the Annex defines that the carrier shall be liable for loss or damage caused by delay where the ‘journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required’. It defines that the damages shall comprise the reasonable costs of accommodation and of notifying persons expecting the passenger.
- 3.328 This appears to give the same right to hotel accommodation as Article 18(2)(b). However, unlike Article 18(2)(b), it also provides an exemption on the same basis as the exemption for liability for death and injury discussed above. This seems to be inconsistent with the main text of the Regulation. As Article 16 defines that the Annex regulates liability subject to the provisions of the Chapter of the Regulation, this implies that the Regulation would take priority, and therefore there should be no such exemption.

- 3.329 However, the Commission and most NEBs have agreed that Article 16-18 and the Annex should be interpreted as meaning that there is no exemption from provision of assistance required by Article 16 and 18, including hotel accommodation, but there is an exemption from the payment of Article 17 compensation in circumstances outside the operator's control¹⁵. This interpretation is on the basis of Recital 14 to the Regulation, which specifies that 'It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV...'. This implies that the intention was that compensation should be subject to the same general exemptions from liability defined in the Annex.
- 3.330 But this is not completely clear: the CJEU pointed out in the IATA/ELFAA case with respect to Regulation 261/2004 that 'while the preamble to a Community measure may explain the latter's content... it cannot be relied upon as a ground for derogating from the actual provisions of the measure in question'¹⁶. It might seem to follow from this that it should not be possible for railway undertakings to rely on Recital 14 to derogate from the right to compensation in Article 17¹⁷. The Commission has noted that the Austrian NEB does not agree with its interpretation.
- 3.331 More generally, the Annex also does not appear to define (or limit) any right to damages except in cases where the journey cannot be continued the same day, or to provide a right to recovery of any costs other than the costs of accommodation and notification. Article 32(3) of the Annex defines that rights (if any) to other damages should be defined by national law. It is not clear whether this is a conflict with the main Regulation, as the Regulation may not be considered 'national law'. In any case, the rights to assistance and compensation defined in the main body of the Regulation may not be considered 'damages': the CJEU found in the IATA/ELFAA case that the right to assistance such as refreshments and rerouting (although not specifically compensation) in the case of delay was 'standardised assistance' rather than 'damages'. If the rights defined in the Regulation were also not 'damages', then there could be no conflict - although the costs of accommodation defined in Article 32(1) of the Annex are described as 'damages'.
- 3.332 As noted above, this issue is now subject to a reference to the CJEU, which should resolve the uncertainty, albeit not within the timescale for this study. In a case brought by the Austrian rail operator ÖBB-Personenverkehr against the Austrian NEB and Ministry of Transport, Innovation and Technology, the Austrian Administrative Court has requested a preliminary ruling from the CJEU as to whether Article 17 should be interpreted as meaning that a railway undertaking may exclude its obligation to pay compensation of the ticket price in cases of force majeure, either through application by analogy of the exemptions in passenger rights Regulations in other sectors, or through the exclusions from liability in Article 32(2) of the Annex¹⁸.

¹⁵ NEB Rail meeting, 22 November 2010

¹⁶ Case C-344/04, IATA and ELFAA v Department for Transport

¹⁷ However it should be noted that in the Sturgeon case (Joined cases C-402/07 and C-432/07), the Court took into account the Recitals in expanding (although not derogating from) the rights explicitly identified in the main text of the Regulation.

¹⁸ Case C-509/11

Liability for damage to mobility equipment

- 3.333 Article 25 defines that if the railway undertaking is liable for damage to mobility equipment, there should be no limit to the liability. This does not actually define that the railway undertaking is liable.
- 3.334 Reflecting precedent in the air transport sector, mobility equipment would probably be considered as luggage, and the Annex defines that the carrier is liable in some circumstances for hand and registered luggage. However, the Annex defines a limit to this liability and several exclusions. Although Article 11 defines that the rules in the Annex on liability for luggage are subject to chapter III of the Regulation, Article 25 is not part of chapter III, and therefore it is not clear that Article 25 takes precedence over the Annex.

Conclusions: Issues with the text of the Regulation

- 3.335 Our analysis did not identify any major issues with the drafting of the text of the Regulation which have resulted in either an inability to implement it, or significant differences in implementation between Member States. However, there are several grey areas which could benefit from clarification.
- 3.336 The most significant issues with the text of the Regulation are:
- I The definition of force majeure, and the scope of the exemption from railway undertakings' obligations that it provides:** It is not clear whether railway undertakings are exempted from any or all of the obligations to provide compensation or assistance in cases of force majeure, and the Regulation appears to be inconsistent with the Annex in this respect. It is also not clear how force majeure should be defined. Although the Commission and the majority of NEBs have agreed an interpretation of railway undertakings' obligations, this issue is now subject to a reference to the CJEU.
 - I How journeys involving multiple segments should be treated for the purposes of Articles 16-18:** Many of the worst delays passengers experience occur when a small delay to one train causes them to miss a connecting train. It is not clear what rights passengers have in these cases. Articles 16-18 refer to delay in different ways, with only Article 16 referring to the 'final destination under the transport contract'. Even then, it is not clear what this means: some railway undertakings market through journeys but actually then issue individual tickets for each, and may consider each to be a separate contract.
- 3.337 We also identified some issues with translation of the text of the Regulation into other languages, particularly regarding the term personal security (Article 26).
- 3.338 Whilst not unclear, some stakeholders also identified areas which they believed that the Regulation did not address adequately. The area raised most forcefully was carriage of bicycles: the organisations representing cyclists argued strongly that Article 5 did not place any obligations on railway undertakings to adapt services for bicycles; it is not clear what purpose this Article serves. The requirements on method of sale of tickets, sale and marketing of through tickets, and personal security, are also very limited and it is not clear what these Articles intended to achieve; and the requirement about the level of insurance coverage required is not very specific.

4 Conclusions and recommendations

Introduction

4.1 This chapter sets out the conclusions and recommendations resulting from the study. This chapter builds on the detailed evaluation set out in the previous chapter and give the results of the analysis. We have divided the chapter into three sections:

- Factual conclusions on how the Regulation has been implemented by railway companies and Member States, and issues that have arisen with it.
- Conclusions as to whether the objectives of the Regulation have been met, why they have or have not, and issues that may arise in the future with it.
- Recommendations on areas that we believe need to be addressed going forward.

Factual conclusions

4.2 Overall, we have not identified any single major problem with the implementation of the Regulation, either by Member States or by railway undertakings: there is, for example, no evidence of systematic non-compliance with the Regulation, or a major individual requirement which is so unclear that it cannot be implemented. However, there are issues with several specific requirements and with respect to implementation in some specific Member States and by specific railway undertakings; these issues are discussed in more detail below. In particular, the fact that Member States can exempt most railway services significantly limits the impact of the Regulation; and several individual issues need to be clarified.

4.3 This section summarises the factual issues which have been identified. The following section assesses the extent to which the policy objectives defined for the Regulation have been met, and issues that may arise in the future.

Implementation of the Regulation by Member States

4.4 The Regulation allows Member States to exempt most rail services from most of the provisions of the Regulation, and several have introduced extensive exemptions. Of the largest Member States, France and the UK have exempted all domestic services; however, Spain and Germany have adopted only limited exemptions and Italy has not adopted any. Member States are not required to provide any justification for exemptions, and most did not provide us with any. However, we believe the key reasons Member States have adopted exemptions are:

- some have national laws or policies which address the same issues as the Regulation;
- with respect to suburban and regional services, some provisions may be considered inappropriate (for example the obligation to provide accommodation); and
- to avoid the costs associated with implementing the Regulation - which, as many rail services are subsidised through public service contracts, would often ultimately fall on the Member State.

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- 4.5 In addition, where Member States have adopted limited exemptions, there is often a clear logic for this: for example Belgium has derogated from some provisions on on-board information because some older SNCB rolling stock does not have a speaker system.
- 4.6 However, as discussed below, even where there are derogations, many Member States either have national laws which provide for rights similar to those defined in the Regulation, or they impose similar rights and policies through other means - either through the conditions attached to public service contracts, or policy decisions of the government, which is often the sole shareholder of the national railway undertaking. Therefore, even where services are exempt from the Regulation, rights similar to those defined in the Regulation may still apply.
- 4.7 Partly as a result of this, in most Member States there have been relatively few complaints specifically relating to the Regulation, and few sanctions have been imposed for infringements. Although around 15,000 complaints were received by NEBs in 2011, we estimate that only 2,500-3,500 of these related to the Regulation; to date, only 10 sanctions have been imposed, by 3 Member States. As discussed below, we have identified some issues with enforcement in some States, but stakeholders generally raised few problems with the complaint handling or enforcement systems. However, it is not possible to draw clear conclusions about how effective these are, as in many Member States they have not been tested, either because there have been few complaints that, or because the NEBs have only recently been established. The lack of complaints could partly reflect lack of awareness, or confusion about the scope of exemptions, as well as effective compliance.
- 4.8 There are particular problems with some Member States that have not yet complied with the obligations defined in Article 30 and 32 of the Regulation to designate an NEB and introduce sanctions into national law. In particular:
- France has not designated an NEB, except for Articles 29-31, or introduced sanctions, and on the basis of the (limited) information we were able to obtain from the French NEB, there do not appear to be any plans to comply with these requirements.
 - Italy has also neither formally designated an NEB nor defined sanctions, although it is currently preparing a decree which will do this.
 - In Austria and Romania, although NEBs have been designated and sanctions are available, there are not sanctions available for all infringements of the Regulation.
 - Portugal and Spain have not defined specific sanctions for infringements, although sanctions can be imposed under pre-existing national law. In Portugal this does not cover all infringements of the Regulation.
 - The Slovak Republic also reported that, although NEBs have been designated and sanctions defined, organisational, financial and personnel arrangements for complaint handling and enforcement are not yet in place.
 - In Lithuania, and to a lesser extent in the Slovak Republic, the maximum level of the sanction is very low and therefore it is not clear that this can comply with the 'effective, proportionate and dissuasive' criteria in Article 32.

- 4.9 Even in Member States where there has been an NEB designated and sanctions have been introduced into national law, there are limitations to the enforcement system:
- In many Member States, only conditional or restorative fines can be imposed in cases of infringements (meaning that fines can only be imposed if the operator refuses to rectify an identified problem). These are likely to be less effective as an incentive for general compliance than punitive sanctions for past infringements, because some infringements (for example failure to provide PRM assistance) cannot be rectified once they have occurred, and because a company can always avoid a sanction by providing redress when a specific case is identified by the NEB.
 - The fact that, in most Member States, no sanctions have been imposed means that it cannot be excluded that there may be other problems with the process to impose sanctions which have not yet been identified because the process has not been tested. In particular, as the process is untested, it is often not clear whether sanctions could be imposed on, or collected from, non-national operators and therefore it is not yet clear that sanctions could be an effective deterrent against non-compliance by these operators.
 - Only NEBs for around half of the case study States had undertaken inspections so far to pro-actively check railway undertakings' implementation of the Regulation. The Austrian NEB does not have the power to conduct inspections at all. Inspections may be more effective as a basis for enforcement than passenger complaints, as NEBs can then verify information directly. As discussed in more detail below, there has been very limited compliance with the requirement to publish service quality reports; NEBs could easily have checked this and taken action, but most have not done so.
- 4.10 In addition, we have found that cooperation between NEBs has been limited to date. In most circumstances, it is not necessary for NEBs to cooperate to handle individual cases, as most services are domestic and so it is clear which NEB is responsible for dealing with the case. However, it could be beneficial if NEBs cooperated in order to ensure consistent interpretation and (as far as possible) processes were adopted.
- 4.11 As discussed in more detail below, the evidence available indicates that most railway undertakings have implemented most elements of the Regulation relatively effectively (with some exceptions, particularly with respect to the requirement to publish service quality reports), and the limited current level of enforcement activity may be sufficient for this situation. However, this relatively good level of compliance cannot be assumed to continue indefinitely, partly due to potential changes to the rail transport market.
- Implementation by railway undertakings and station managers***
- 4.12 As part of the section on the manner in which operators and station managers implement the requirements of the Regulation, we reviewed all the Articles that required actions to be taken by one of these entities, and took into consideration where there were exemptions. We reviewed the implementation of these requirements based on both desk research of the railway undertakings' policies and procedures, and through interviews with the railway undertakings, consumer representatives and NEBs.

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- 4.13 We found that there was a generally positive approach to implementing the requirements of the Regulation, and neither consumer representatives nor NEBs indicated that there was severe, deliberate or systematic non-compliance with these requirements, except (as discussed in more detail below) for the issue of service quality reports. However, there are clearly some areas for improvement, and in particular, of the 17 railway undertakings reviewed for this study, we have identified the following:
- We identified some issues with how all railway undertakings had implemented the Regulation, but there was significant variation between them. DB was an example of good practice, having fully implemented almost all requirements of the Regulation, whereas another railway undertaking had not fully implemented the Regulation in the majority of the areas reviewed.
 - On the basis of the information received, implementation of the requirements on provision of information to passengers on board was particularly good.
 - Most railway undertakings had also implemented effectively most of the requirements of the Regulation in the two areas which are likely to be most onerous for them (assistance for disabled passengers and PRMs in booking and using services, and compensation and assistance in cases of travel disruption), although on both of these points there are a number of issues, discussed further below.
 - In contrast, compliance was extremely poor with the requirement to publish service quality reports; most railway undertakings do not publish these at all, and where they are published, the content of the report is usually not compliant with the Regulation. Implementation of the requirement to provide information on passenger rights when booking tickets was also poor.
- 4.14 It should be noted that the assessment we have undertaken is a qualitative assessment of the implementation by each operator. We are not able to provide a legal opinion on whether a railway undertaking is compliant or not with the Regulation. If the Commission wishes to take (or encourage Member States to take) legal measures on the basis of this research, it should obtain legal advice.
- Delays, cancellations and missed connections*
- 4.15 The analysis showed that railway undertakings in most cases appeared to have implemented the requirements to offer reimbursement and compensation (Articles 16 and 17). In reviewing the policies for providing assistance and compensation we found that all would offer reimbursement in the case of delays over one hour. In terms of compensation, all railway undertakings stated that they provided compensation that was compliant with the requirements of the Regulation with some offering a higher level than the Regulation requires; in many cases, this is because more generous provisions are defined in national law. Compensation is always provided in the form of vouchers or bank transfer although for some operators the default is a voucher, and the passenger must request a bank transfer.
- 4.16 However, implementation of the requirements in Article 18 to provide assistance in case of delays or cancellations such as hotel accommodation and refreshments seems to be less effective. Not all railway undertakings will provide refreshments, and some limit the refreshments available. Some will limit the amount that they will pay for in hotel costs. In any case, the fact that many rail delays occur when

the passengers are on board the train between stations, makes it difficult to provide assistance such as refreshments unless these were already available on the train. In some cases there were also issues with the implementation of the requirement in Article 17 to offer rerouting, particularly due to railway undertakings only offering rerouting via their own services.

- 4.17 Consumer representatives and some of the NEBs that contributed to the study expressed some concerns about railway undertakings' implementation of these requirements, and in particular noted that in some cases insufficient information was given to passengers about their rights. Nonetheless, no stakeholders indicated that there was severe, deliberate or systematic non-compliance with these requirements.
- 4.18 As discussed in more detail below, we found that two significant issues are unclear, and as a result, there are significant differences in how railway undertakings approach these issues:

- the extent of the exemption from provision of compensation and assistance in cases of *force majeure*; and
- how delays due to missed connections are treated.

- 4.19 As it is not clear what the existing Regulation requires in these areas, railway undertakings apply different interpretations. For example, most railway undertakings consider there is no obligation to pay compensation in cases of force majeure, but other obligations still apply; however one operator considers there is also no obligation to provide refunds. We discuss this further below.

Disabled persons and persons with reduced mobility

- 4.20 The analysis shows that, where there are no exemptions, railway undertakings and station managers are usually providing the services required by the Regulation, albeit with some issues in specific cases. Even where there are exemptions, similar services are often provided, either due to the policy of the railway undertaking or requirements of national law.
- 4.21 In relation to the provisions in the TAP TSI on pre-journey information on accessibility, we found that the majority of railway undertakings provided most of this, but with some omissions, particularly information on the maximum size and weight of wheelchairs permitted, and on the type and minimum amount of PRM facilities available on board. Furthermore, we note that of the EDF members that did respond on the issue of information in stations, the evaluation that was provided was positive.
- 4.22 The majority of railway undertakings also provide services to PRMs according to Articles 22 and 23 of the Regulation: no railway undertaking explicitly charged for assistance, charged more for tickets for disabled people, or had unreasonable policies on acceptance of disabled people for travel. However, there were some areas where policies could be changed to improve access for disabled people: for example, it is not always possible to book PRM-specific tickets (such as wheelchair seats, or tickets for guide dogs) online, and several disability organisations informed us of difficulties around obtaining tickets for assistants. A number of companies used premium-rate phone numbers for reservation of assistance, which indirectly causes an increased cost for buying a PRM ticket.

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- 4.23 The Regulation allows provision of assistance to be subject to notification 48 hours in advance. We found that most railway undertakings required a notice period equal to or shorter than this (often 24 hours), and in some cases the service offered is much better than the Regulation requires; for example, RENFE does not require advance notification for assistance at its larger stations. However, four railway undertakings required longer periods, at least in some circumstances. The majority of railway undertakings nonetheless stated that they would provide the same level of assistance where assistance was not requested in advance, if possible.
- 4.24 A key issue remains the requirement to apply the PRM TSI to rolling stock and infrastructure. Most railway undertakings and infrastructure managers interpret the Regulation, in line with the TSI, as only requiring compliance when infrastructure and rolling stock is new build, renewed or upgraded. There is no EU-wide deadline by which infrastructure or rolling stock has to be adapted, and whilst many railway undertakings had plans to invest to improve accessibility of stations and rolling stock, there are limits to the amount of investment that they can make, particularly in the current economic climate.

Other issues

- 4.25 We have concerns about the manner that insurance provisions have been applied in two Member States; in our view the railway undertakings in these States have not made sufficient provision to cover potential needs if a major event occurs that needs to draw on these funds. The Regulation does not specify a level of coverage that is required but the level in these States does not seem to be sufficient to meet the requirement for 'adequate' coverage. We have also evaluated what 'adequate' insurance might be, this is set out in Appendix E.
- 4.26 Also, as noted above, we have substantial concerns about the implementation of the requirement to prepare and publish service quality reports. Many are not published at all, and many of those that have been published have substantial gaps in their content. These reports are fundamental to be able to identify the performance of operators and to provide an evaluation of how operators are applying the provisions of the Regulation. A particular concern is that it would have been relatively easy for NEBs to check that railway undertakings had produced these reports as required, and take action if they had not; they do not appear to have taken adequate measures to enforce the requirement to produce these reports.

Issues with the Regulation

- 4.27 As well as reviewing the implementation of the Regulation by railway undertakings and Member States, we have reviewed its requirements and discussed with stakeholders whether any aspects have caused difficulties or needed clarification. Whilst there was no individual issue which had caused really significant problems, we have identified several issues which are unclear and could be clarified.
- 4.28 The most significant issues with the text of the Regulation are:
- **The definition of force majeure, and the scope of the exemption from railway undertakings' obligations that it provides:** It is not clear whether railway undertakings are exempted from any or all of the obligations to provide compensation or assistance in cases of force majeure, and the Regulation

appears to be inconsistent with the Annex in this respect. Although the Commission and the majority of NEBs have agreed an interpretation of railway undertakings' obligations, this issue is now subject to a reference to the CJEU. It is also not clear how force majeure should be defined: several railway undertakings defined this to include natural disasters, extreme weather conditions, police investigations, fires affecting railway infrastructure, strikes, terrorist threats, sabotage, demonstrations, service suspended by official order, blocking of the railway, illness and unauthorized alarm use. In contrast, some railway undertakings did not define the circumstances further than 'force majeure' or a similar undefined term, such as 'severe circumstances'.

I How journeys involving multiple segments should be treated for the purposes of Articles 16-18: Many of the worst delays passengers experience occur when a delay to one train causes them to miss a connecting train. It is not clear what rights passengers have in these cases. Articles 16-18 refer to delay in different ways, with only Article 16 referring to the 'final destination under the transport contract'. Even then, it is not clear what this means: some railway undertakings market through journeys but actually then issue individual tickets for each, and may consider each to be a separate contract.

- 4.29 There were also some other terms which stakeholders identified as being in need of clarification and we set out proposals for how these issues should be addressed below. We also identified some issues with translation of the text of the Regulation into different languages, particularly regarding the term personal security (Article 26) which in some languages also means 'safety'.
- 4.30 Whilst not unclear, some stakeholders also identified areas which they believed that the Regulation did not address adequately. The area raised most forcefully was carriage of bicycles: the organisations representing cyclists argued strongly that Article 5 did not place any obligations on railway undertakings to adapt services for bicycles; it is not clear what purpose this Article was intended to serve. The requirements on method of sale of tickets, sale and marketing of through tickets, and personal security, are also very limited and it is not clear what these Articles intended to achieve. As discussed below, it is also not clear what Article 21(1) on compliance with PRM TSI adds.

Conclusions on the overall effectiveness of the Regulation

- 4.31 Table 4.1 summarises the extent to which the objectives of the Regulation, as described in appendix B, have been achieved. Although some of the objectives have been achieved, in other areas there has been limited progress or it is too early to reach clear conclusions.

TABLE 4.1 ASSESSMENT AGAINST THE OBJECTIVES

Objective	Assessment
To increase the share of rail transport in relation to other modes of transport by improving the quality and effectiveness of rail passenger services	Limited impact: Some aspects of rail service quality have been improved as a result of implementation of the Regulation, but impacts have been limited due to the extensive exemptions, and the fact that many railway undertakings applied similar policies in any case, due to either their own commercial

	policy, government policy, or the requirements of national law.
To increase consumer protection available for rail passengers	Achieved: The Regulation has increased the protection available to rail passengers, particularly those on international intra-Community journeys for which there can be no exemptions.
To ensure the safety and security of passengers	Limited impact: The Regulation has had limited impact in these areas, but partly this is because the requirements of the Regulation are quite limited.
To increase the information available to rail passengers	Partly achieved: Good pre-journey information is provided and in most respects this is sufficient to meet what the Regulation requires. However, the requirement to produce service quality reports has not been adequately implemented.
To ensure coherence between the rights of passengers by rail and by other modes, and with existing legislation for rail	Achieved: The Regulation increased consistency with the legislation for air transport, and subsequent legislation has been introduced for maritime and bus/coach transport. There are however differences between these pieces of legislation which do not appear to be driven by differences between the modes of transport.
To ensure that disabled persons and persons of reduced mobility (PRM) should have opportunities for rail travel comparable to those of other citizens	Partly achieved: The requirements in the Regulation on provision of assistance are implemented in most cases. However, the impacts are limited by fact that there is no deadline by when existing infrastructure and rolling stock must comply with the PRM TSI.

4.32 The main reasons not all of the objectives have been achieved are:

- I Exemptions:** As discussed above, Member States can derogate from most of the requirements of the Regulation, except with respect to international intra-EU services which (in most Member States) account for only a small proportion of rail journeys. By definition, the Regulation could have no impact where a State derogates from its requirements.
- I Pre-existing national laws and policies:** Many Member States already had national laws which addressed the same issues as the Regulation, albeit not necessarily in exactly the same way. Even where there were no national laws, many railway undertakings had policies which addressed the same issues, sometimes as a result of requirements defined in public service contracts, or indirectly as a result of government policy (as the government is often the sole shareholder). In some cases these were more generous than the Regulation: for example in Spain national law specifies requirements on compensation in cases of delays which are more generous than the Regulation requires, and in turn the main national railway undertaking applied policies which were more generous than national law required.

- I Some provisions are unclear:** As discussed above, there is not a major problem with the clarity of the Regulation, but nonetheless there are some specific provisions that need clarification so that they can be implemented effectively: for example long delays to passengers are particularly likely to occur due to missed connections, but it is not clear whether or in what circumstances passengers are entitled to assistance or compensation when they suffer delays due to missed connections.
 - I Some provisions are limited:** Some other provisions are so limited in terms of the rights or obligations that they define that it is not clear what purpose they were intended to serve. The clearest example of this is the provision on carriage of bicycles.
- 4.33 Even if these issues had not arisen, it is unlikely that the Regulation would have met all of its objectives, because some of the objectives were more ambitious than a Regulation of this nature could realistically have met. In particular:
- I Increase in market share:** It is unlikely that the Regulation could have had a material impact on rail market share. If it did, railway undertakings might have been expected to implement similar requirements of their own accord, making the Regulation unnecessary. Ultimately, the market share of rail (as for any other mode of transport) will be determined primarily by the journey time and price offered for a particular journey, and how this compares to the other modes of transport available. In any case, the fact that similar legislation has been introduced covering all modes of transport makes it unlikely that it will increase the share of any one mode.
 - I Passenger security:** A specific objective was to improve the personal security of passengers, but the provisions in the Regulation relating to security are very limited and do not go beyond what we would expect most railway undertakings to have been doing in any case.
- 4.34 However, although an evaluation of this nature will inevitably highlight the weaknesses and limitations with the implementation of a Regulation, it should be emphasised that the overall result has been fairly positive. Most of the requirements in the two most significant areas (compensation and assistance in cases of disruption, and assistance for disabled persons and PRMs in booking and taking services) have been implemented effectively by most railway undertakings. In particular, this Regulation has generated significantly fewer difficulties than the similar legislation in the air transport sector (Regulation 261/2004). As noted above, although we have identified problems with the implementation of some specific requirements of the Regulation and by some specific railway undertakings, we have not found evidence of systematic or deliberate non-compliance, except with the requirement to publish service quality reports.
- 4.35 A key difference with the air transport sector, which may partly explain this, is that railway undertakings are often not conventional profit-maximising companies and generally do not have a commercial incentive to minimise the costs of implementing the Regulation. In many Member States, there is one main national railway undertaking, which may often be State-owned and therefore follows government policy rather than necessarily maximising profit. Even where there are multiple railway undertakings (such as in the UK or the Netherlands), these are usually operating under the terms of public service contracts, which will specify

compliance with the Regulation or the related provisions in national law. Non-compliance with service quality requirements could lead to penalties under the contract or potentially, in a severe case, contract termination.

- 4.36 Railway undertakings are also generally not subject to the same level of price competition that airlines are, and this price competition provides a strong market pressure to minimise operating costs. Airlines do not believe that the market provides them with an incentive to implement everything that Regulation 261/2004 requires, and therefore in effect they may have a commercial incentive not to do so. Although the equivalent legislation on passengers with reduced mobility in the air transport sector (Regulation 1107/2006) is being implemented relatively effectively¹⁹, the most onerous (and expensive) obligations it defines are for airports, who with certain exceptions are not subject to the same intense market pressure as airlines.
- 4.37 The main reason that the market may not provide an incentive to implement effectively legislation of this nature is that passengers generally do not know, when making reservations, what the risk of disruption is, or how the operator will handle disruption if it occurs. In both the air and rail sectors, little statistical information is available on relative operational performance of companies, and therefore passengers cannot take this into account when choosing with whom or whether to buy a ticket. Even frequent travellers may not know how an operator will handle severe disruption, as it is relatively rare. Therefore, there may be a market failure due to lack of information. In the rail sector (and also in some cases in the air sector), many passengers may not have any choice of operator or whether to travel, and therefore there may also be a market failure due to lack of competition.
- 4.38 Another reason that the implementation of this Regulation by railway undertakings may be better than the implementation of Regulation 261/2004 by airlines is that the requirements of this Regulation may be considered more proportionate:
- Monetary compensation can only be 50% of the ticket price, whereas under Regulation 261/2004 it is a fixed rate which can be several times the ticket price.
 - Although there are similar obligations on provision of accommodation and refreshments, in practice very long delays are much less common for rail transport. Rail passengers can usually be rerouted via other rail routes, or other surface transport, whereas for air passengers rerouting options are often more limited.

Market changes which may impact the implementation of the Regulation

- 4.39 As a result of market reforms, the rail sector could become more competitive in future: as part of the third railway package, international services have had to be open to competition since 2010, and some Member States have permitted open-access domestic services. For example, NTV has recently launched high speed domestic services in Italy, in competition with Trenitalia, and DB has indicated an intention to operate high speed trains to London from 2015, in competition with Eurostar. The Commission is currently evaluating measures for further reforms to the sector which could introduce greater competition in those Member States that

¹⁹ Steer Davies Gleave (2010): Evaluation of Regulation 1107/2006

currently have none. As a result, there may be rail services that operate under competitive pressure on a wider range of routes in future, perhaps operated on a for-profit basis by railway undertakings that would have an increased commercial pressure to minimise their operating costs, including potentially costs of compliance with the Regulation.

- 4.40 The experience from the air transport sector indicates that greater competition is likely to benefit consumers by leading to a greater choice of services and lower fares. In the rail sector, greater competition may also benefit governments, as it may lead to improved cost-efficiency, it could enable them to reduce subsidies to the sector. However, for the reasons outlined above, competition is unlikely to lead to better implementation of passenger rights requirements, and if the market does not provide this incentive, only the enforcement system can do so. Therefore, it is likely that enforcement of the Regulation will need to be more effective in future if the current relatively good rate of compliance with the Regulation is to be maintained.
- 4.41 Although current experience does not indicate that implementation of the Regulation by new entrants is consistently better or worse than implementation by incumbents, it is too early to reach any conclusions about this given the limited number of new entrant services. However, we note that at least in the case of NTV, the initial evidence is that it is seeking to compete with Trenitalia on quality (which could include passenger rights) rather than on price. This is different from the experience in the air sector, but it is not yet possible to say whether this is an indicator of a general trend, or if it reflects a response to the specific characteristics of the Italian rail sector and the strengths and weaknesses of the service Trenitalia currently provides.
- Economic impact of the Regulation***
- 4.42 There were no explicit economic objectives for the Regulation; nonetheless, we have sought to identify whether the Regulation has had any significant economic impact.
- 4.43 The main economic impacts that the Regulation could have had would be the costs for railway undertakings and Member States of implementing it, and the benefits to passengers that it provided. If the costs to railway undertakings were substantial enough that they led to increased fares, this could also have an economic impact in terms of reduced demand for travel; however, if there was a significant improvement to service quality, this could increase demand for rail travel.
- 4.44 Although we asked railway undertakings what costs they had incurred in implementing the Regulation, most did not provide any information, in several cases stating that this would be commercially sensitive. Where cost information was available, the most significant cost incurred was the cost of adapting infrastructure and rolling stock to comply with the PRM TSI; however, this was a pre-existing requirement and so is not attributable to the Regulation. The next most significant cost was the cost of providing compensation and assistance, but again many railway undertakings already did this.
- 4.45 We also estimate that NEBs have incurred costs of €4-5 million per year. However, this is very small in the context of the overall turnover of the European rail

transport sector, and is also not wholly incremental, as many of the NEBs already handled passenger complaints under national law.

4.46 Since many railway undertakings were already applying similar policies in most of the areas covered by the Regulation and therefore incurring similar costs, and the most significant cost is not attributable to the Regulation at all, it appears likely that the costs directly generated by the Regulation have been limited. As discussed above, the impact on service quality has also been relatively limited so far. Therefore, on the basis of the information available, it appears that the Regulation has had limited economic impact to date.

Assessment against evaluation criteria

4.47 Given the nature of what the Regulation requires, most of the analysis focuses on how effectively it has been implemented and therefore how effective it has been in meeting the objectives that were defined for it. However, we are also required to examine the extent to which the Regulation has met the general evaluation criteria of relevance, effectiveness, efficiency, utility and sustainability. Table 4.2 below provides a summary assessment against these other evaluation criteria.

TABLE 4.2 ASSESSMENT AGAINST EVALUATION CRITERIA

Evaluation criteria	Assessment
<p>Relevance: to what extent are the fields of intervention (the key issues above) and the measures defined through the Regulation appropriate in order to achieve the objectives pursued by the Regulation</p>	<p>In most respects, the measures that are defined in the Regulation are relevant to meeting its objectives. For example, an objective was to ensure that disabled persons and persons of reduced mobility (PRM) should have opportunities for rail travel comparable to those of other citizens, and several specific measures are included which if implemented effectively would make significant progress towards this objective.</p> <p>However, the measures contained within the Regulation are not sufficient to meet some of the objectives (as set out in Table 4.1 above. For example, it is unlikely that any of the measures in the Regulation would have a material impact on rail market share, and therefore it is unlikely that the Regulation would help achieve this objective. This could be taken to imply that the measures were insufficient - but could also mean this objective was excessively ambitious for a Regulation of this nature.</p> <p>There are also some provisions in the Regulation where it is not clear how they relate to the objectives - for example there is a (very limited) provision on carriage of bicycles, but no objective which relates to this issue.</p>
<p>Effectiveness: What effects (impacts) have been obtained by the intervention and, in particular, have these effects contributed to the achievement of the objectives of the intervention and more</p>	<p>As discussed in detail in chapter 3 and summarised above, most requirements of the Regulation have been implemented effectively (with certain exceptions such as the requirement to publish service quality reports). Some of the objectives defined for the Regulation have been met effectively.</p> <p>However, the impacts have been limited by the fact that Member States are permitted to exempt most rail services</p>

broadly, to the objectives of the Regulation?	from most of the requirements of the Regulation, and several have done so. In addition, in many Member States, national laws or policies already defined provisions which were quite similar to what the Regulation requires.
Efficiency (cost-effectiveness): How economically have the various inputs been converted into outputs and results? Were the (expected) effects obtained at a reasonable cost?	<p>There is limited information available on the costs which have been generated by the implementation of the Regulation, as many railway undertakings said that this information was commercially confidential. Costs of around €4-5 million have been incurred by Member States in establishing enforcement bodies, but this cost is quite low in the context of the total turnover of the EU rail sector.</p> <p>Overall the costs of implementing the Regulation appear to have been limited because many railway undertakings were already applying similar policies to (albeit not exactly the same as) those it requires (and in those Member States where it would have had a higher cost the majority of services have been exempted). The most significant potential cost is the cost of making rolling stock and infrastructure accessible to disabled passengers and PRMs, but this was a pre-existing requirement and therefore is not attributable to the Regulation.</p>
Utility: Do the impacts achieved by an intervention correspond to the needs identified and the problems to be solved?	As discussed above, most parts of the Regulation have been implemented effectively and some of the objectives have been met. The Regulation has also been successful in addressing some problems - for example, it has ensured greater consistency between the rights available to passengers using different modes of transport. However, for the reasons discussed above, the impacts achieved have been limited by exemptions adopted by Member States and the fact that many railway undertakings already followed similar policies in any case. These factors have limited the overall useful impact of the Regulation.
Sustainability: Will the effects achieved last in the medium or long term?	<p>In some respects the implementation of the Regulation should improve: some derogations may not be renewed; some States that have not implemented enforcement bodies and sanctions may do so; and some railway undertakings may adapt their policies where they are not currently fully compliant. In addition, judgements of the CJEU may address some of the areas in which the Regulation is not clear.</p> <p>However, as discussed above in some Member States effective implementation of the Regulation is dependent on there being one national railway undertaking that, largely voluntarily, implements the Regulation effectively. It is not clear how effectively the Regulation will be implemented when there are more competing operators in the future. Experience from the air transport sector is that more competition will lead to better services and lower fares but not necessarily to more respect for passenger rights.</p> <p>In addition, constraints on public budgets in many Member States may limit the resources that can be allocated to implementation of measures such as those defined in the</p>

Recommendations

- 4.48 This sections sets out our recommendations, which cover the following issues:
- exemptions;
 - actions to promote awareness of passenger rights;
 - actions to improve enforcement;
 - service quality reports;
 - issues requiring clarification; and
 - issues which are not fully covered by the current Regulation.
- 4.49 If the Commission were to proceed with these recommendations and consider revising the Regulation, an impact assessment would be required. In particular, this should seek to quantify (to the extent possible) the cost implications for railway undertakings and the benefits to passengers of the measures proposed, and any risks of unintended consequences.

Exemptions

- 4.50 The key factor that has limited the impact that the Regulation has had is the degree to which exemptions have been granted in Member States. While many Member States that have adopted exemptions address the same issues either through national law, or through other means (such as requirements in concession contracts), they are not always the same as the requirements in the Regulation. This flexibility may be necessary in the short term to allow for markets to be aligned to different infrastructure or contractual requirements but does go against the principle of creating a single integrated European Railway, which is at the heart of all Community policy for the sector.
- 4.51 As discussed in more detail below, it may be necessary to continue to allow some exemptions for regional, urban, suburban and non-EU services, but the case is less clear for national long distance services. Therefore, the Commission should consider whether it is appropriate to continue to allow temporary or permanent exemptions from the Regulation, with the view of creating harmonised conditions for long distance rail passengers across the EU. Table 4.3 summarises the advantages and disadvantages of Member States being able to offer exemptions.

TABLE 4.3 ADVANTAGES AND DISADVANTAGES OF ALLOWING EXEMPTIONS

Advantages	Disadvantages
<ul style="list-style-type: none"> ■ Allowing exemptions for domestic services is consistent with the principle of subsidiarity - individual Member States can determine the provisions applicable to domestic services. As the large majority of rail journeys are domestic, it is not clear that there is a need for EU-wide regulation of these services. ■ Increased obligations for railway undertakings will increase their costs, 	<ul style="list-style-type: none"> ■ The application of different regimes for domestic and intra-EU international services is not consistent with the wider policy objective of creating a single integrated European railway ■ The application of different regimes for different services may cause confusion amongst passengers about their rights, and therefore mean that they do not claim them. ■ The applications of different regimes

which would often be passed to the State which funds them. This may be unrealistic in the current economic crisis.

means there is not a level playing field for operators who operate in a number of Member States (not necessarily providing international services).

Urban, suburban and regional

- 4.52 Even if it was decided that domestic long distance services should not be exempt from the Regulation, it would be necessary to continue to allow at least partial exemptions for urban, suburban and regional services, for which some Articles are arguably inappropriate. For example, it might be considered unnecessary to offer a right to accommodation for these journeys.
- 4.53 If there was no exemption permitted for domestic long distance services, but exemptions were still permitted for regional services, the Commission might also need to consider adopting a more specific definition of ‘regional’ services. Article 3 of Directive 91/440/EEC defines these as ‘transport services operated to meet the transport needs of a region’, but this is quite a broad definition. There are some services which railway undertakings consider ‘regional’ which most passengers would probably consider to be long distance.²⁰
- 4.54 Finally, it should be clarified in what circumstances urban, suburban and regional services that cross borders can be exempted. We would assume that an exemption should be allowed, because (as recognised in the Regulation) these services are different and some provisions of the Regulation may not be appropriate. However, it should be clarified how they can be exempted. This could be either by:
- the Member State that licenses the railway undertaking concerned; or
 - agreement of both Member States.

Non-EU services

- 4.55 It is probably also necessary to allow partial exemptions for non-EU services as EU law cannot be enforced on an extra-territorial basis. However, it is not clear why the Regulation could not apply to the portion of the journey within the EU. For example, if a train from Helsinki to St Petersburg was delayed in Helsinki, the railway undertaking could be required to provide the rights specified in the Regulation - even if it could not be required by EU law to provide equivalent rights if the train was delayed between the border station and St Petersburg.
- 4.56 It should also be clarified that the exemption for ‘non-EU’ services does not apply where the non-EU State concerned is a State within which the Regulation applies, either as a result of the State being a member of the European Economic Area, or (as in the case of Switzerland) because it has a bilateral agreement with the EU.

International services which reach the first station only

- 4.57 Some long distance services cross between Member States in order to reach the first border station only. These services may not be considered as ‘international’ by the railway undertakings concerned, as they do not necessarily cross onto the network of the neighbouring railway. This is particularly apparent at the border between France and Spain, where the tracks of each national railway (which are of

²⁰ For example the Renfe route Madrid-Badajoz (distance 400km, journey time 5 hours) is considered ‘regional’.

different gauges) cross the frontiers at Hendaye/Irún and Portbou/Cerbere, but a similar issue applies at some other borders as well - for example there are 'French' platforms at the main Basel station in Switzerland.

- 4.58 In our view it is reasonably clear that these services are 'international' because they cross recognised boundaries between States; railway infrastructure does not define national boundaries. In any case, if there was a dispute, the CJEU has determined that derogations from Community measures on consumer protection should be interpreted narrowly²¹, and therefore it appears unlikely that it would accept that these could be covered by the derogation (although clearly this would be uncertain until such time as there was a judgement on this issue).
- 4.59 Since these services are (at least in our interpretation) international, it would follow that Member States cannot apply their own rules to them, and therefore they should be covered by the Regulation. It is also difficult to see how any exemption for services to border stations could be defined: for example Irún in Spain is clearly a border station (being 1km from the frontier), but for a high speed train arriving in Brussels from France, the first (and hence 'border') station is Brussels Midi. It would clearly not be reasonable to allow a train to Belgium from France to be considered a domestic French service because it did not proceed beyond Brussels.
- 4.60 Due to the potential difficulties with definition and in order to ensure passengers are properly protected, our provisional view is that there should be no exemption permitted. However, this would need to be offset against the risk that, if there was a different or more generous passenger rights regime for cross-border services (and hence a regime that is more onerous for railway undertakings to implement), railway undertakings might be deterred from operating these services at all. This is a particular risk as the cross-border traffic is usually a small part of their business, and cross-border links may not be required by national public service contracts. We note that there has been a trend in recent years to stop services just short of border stations, which is inconvenient for passengers making intra-Community journeys and is clearly not something that the Community should encourage.
- 4.61 Therefore, although we would recommend that exemptions should not be permitted for services that cross borders even if just to the first border station, the implications of this would need to be carefully considered by the impact assessment. This would also need to take into account whatever measures are brought forward for the fourth package of reforms to the rail sector.

Actions to improve awareness of passenger rights

- 4.62 Article 29 of the Regulation requires railway undertakings to inform passengers of their rights but it does not specify how they should do this, or specify in detail what information should be provided. In some Member States we have seen that passengers have little awareness of their rights. Although this is also the case in other transport sectors it may be exacerbated in the rail sector by the range of exemptions, which mean different rights apply for different services.
- 4.63 The equivalent legislation in the air transport sector requires airlines to inform passengers of their rights by displaying notices at check-in, and also by issuing a

²¹ Case C-336/03 easyCar [2005] ECR I-1947, paragraph 21

written notice in cases of severe disruption²²; therefore, we have considered whether there could be an equivalent requirement in the rail sector.

4.64 Rail passengers generally do not have to check-in, and the requirement to issue notices in the event of disruption has proved difficult to implement in the air transport sector and could be even more difficult to implement in rail, due to the number of passengers potentially impacted by disruption (although we note that NTV are considering this). Therefore, the specific requirements in the air transport sector could not be transposed directly to the rail sector. However, there could be a requirement to display notices, in a prominent position, at rail stations and on board trains, informing passengers about their rights under the Regulation. The exact content of these notices would have to vary between Member States because of exemptions but the Regulation could specify minimum requirements for these, for example to include:

- a summary of the terms on provision of compensation and assistance in cases of disruption, and the provisions on assistance for passengers with reduced mobility, except where the State concerned has derogated from these provisions;
- where there are exemptions from these provisions impacting some but not all services, details of the exemptions; and
- as already required by Article 29(2), contact details of the national enforcement body.

4.65 To avoid creating an excessive burden on railway undertakings, the obligation to display posters at stations could be limited to staffed stations that already have spaces to show posters.

4.66 It is also important that awareness of passenger rights is increased at a national level. In some Member States this is being done by consumer associations (Czech Republic, Germany and Italy) but it should be something that is encouraged across the EU. Therefore, we recommend that the Commission, NEBs and railway undertakings should undertake an information campaign to increase awareness amongst passengers of their rights.

Actions to improve complaint handling and enforcement

4.67 As discussed above, some Member States have not complied with the obligations to define enforcement bodies and introduce effective, proportionate and dissuasive sanctions into national law. Where this study has found clear evidence of non-compliance by Member States, the Commission could consider appropriate measures to encourage the State to comply with these obligations. Where national law only allows for conditional or restorative sanctions to be imposed, the Commission could ask States to demonstrate that their enforcement regime nonetheless meets the ‘effective, proportionate and dissuasive’ criteria in Article 32.

4.68 To date, most NEBs have received few complaints, and many have not undertaken inspections to verify independently that railway undertakings are implementing the Regulation properly. As a result, some NEBs have not developed clear mechanisms to handle complaints, or to take action when issues are identified

²² Regulation 261/2004, Article 14

arising from inspections. Overall, some of the NEBs appear to have limited experience and capabilities with respect to passenger rights, particularly if compared to those established in the air transport sector.

- 4.69 To address this, we suggest that the Commission identify and develop guidelines for the manner in which NEBs are to carry out their activities. These guidelines could define:
- the development of a complaint handling process;
 - timescales for complaint handling (discussed further below);
 - circumstances under which sanctions should be considered (subject to provisions of national law);
 - provision of information to passengers on their rights and how to complain;
 - inspections of railway undertakings and station managers; and
 - other pro-active measures that should be taken, such as checking Conditions of Carriage and service quality reports.
- 4.70 This needs to be coupled with the NEBs taking a more pro-active role in relation to enforcement. As noted above, only 3 Member States have actually imposed fines following the identification of an infringement. Although this is partly due to the lack of complaints and the overall good implementation of the Regulation by railway undertakings, our analysis has nonetheless identified some areas of non-compliance (particularly the failure to publish compliant service quality reports), which NEBs could have identified and taken action about. To date, many of the NEBs have been taking their first steps in this area so it is not necessarily surprising that they would seek a collaborative approach to dealing with railway undertakings, but this should not continue indefinitely. The Commission should monitor this area to ensure that Member States are complying with their obligation to ensure that the Regulation is respected.
- 4.71 Tied to this is the level of compliance with Article 30(1) on the independence of enforcement bodies. We mentioned in the previous chapter that there are concerns with the independence of some NEBs from the main operators. We note that the Commission is pursuing infringement proceedings against Romania and Italy in relation to the independence of their rail regulatory bodies; the Romanian regulatory body is also the Romanian NEB, and the Italian regulatory body is part of the Ministry that is currently functioning as the NEB. It follows that, for these States, there should also be concerns with the level of independence of the NEBs. As the Commission has taken action to enforce the independence provisions with respect to Directive 2001/14/EC, and the definitions of independence are equivalent, it could also consider taking action with respect to infringements of this Article of the Regulation.

Cooperation between NEBs

- 4.72 We also suggest that the Commission should encourage NEBs to cooperate more effectively. Although, as most services are domestic, it is not always necessary for NEBs to cooperate in order to handle individual complaints, better coordination would be helpful in ensuring consistency and to spread best practice. This can partly be achieved through the occasional NEB meetings that have been organised but measures could also be taken to encourage other contacts between NEBs, for example by circulating contact email details.

4.73 This Regulation is not within the scope of Regulation 2006/2004 on consumer protection cooperation and therefore the NEBs are not designated as enforcement bodies under it (although some are due to responsibilities they have with respect to other legislation). This may not be necessary at present, due to the relatively limited number of cross-border rail operations, but as discussed above, changes to the rail market may mean that there are more competing cross-border services in future. Therefore, we recommend that the Commission should consider bringing this Regulation within the scope of Regulation 2006/2004 on consumer protection cooperation. However, it should be noted that this will only be of benefit in addressing cases where there is an infringement which impacts the collective interest of consumers in two or more States (such as a railway undertaking policy or procedure that is non-compliant); it does not help address infringement in individual cases.

Timescale for complaints

4.74 The Regulation specifies a deadline within which railway undertakings should respond to passenger complaints. However, there is no corresponding deadline for NEBs. This has not been identified as a problem to date, but this may be partly because the number of complaints to most NEBs is low. There is also no time limit within which passengers must complain to railway undertakings, or NEBs, about incidents.

4.75 It is probably not practical to define within the Regulation a time limit within which NEBs must respond to passengers. NEB's approaches to complaint handling vary significantly: for example, some provide an alternative dispute resolution or mediation service, whereas others focus primarily on enforcement. NEBs have to balance complaint handling under this Regulation against other enforcement activities, both with respect to this Regulation and (in many cases) other consumer protection Regulations. In addition, the time taken to handle an individual case will depend on how long it takes the NEB to collect the information it needs from the railway undertaking and any other relevant source.

4.76 However, if the Commission were to provide guidance on 'best practice' for NEBs, this could include a timescale for handling complaints. The timescale would need to be relatively long to allow for NEBs to collect the relevant information from railway undertakings before making the decision. We would suggest that:

- NEBs should acknowledge all complaints within 2 weeks;
- NEBs should respond to most complaints within 3 months; and
- in exceptional, complex cases, up to 6 months may be required.

4.77 If a passenger waits for an extended period to complain to a railway undertaking or NEB about an incident, this would also hamper handling of the complaint, because the railway undertaking may not retain all the information necessary to address it. Although this has not been identified as an issue in our research, if the Regulation was amended deadlines could be considered. For comparison, the Montreal Convention in the air transport sector imposes a limit of 2 years.

Alternative dispute resolution and ombudsman services

4.78 As discussed in section 3, most Member States have introduced alternative dispute resolution processes to handle railway complaints against railway undertakings, including (but not just) complaints relating to this Regulation. In some cases

ombudsman services have been created by the main railway undertaking itself. The benefit for passengers (and potentially also for operators) is that these schemes allow quicker and cheaper resolution of claims than a civil court process could do.

- 4.79 We have considered whether the Regulation could require Member States to have such a procedure in place. However, the Commission has recently brought forward proposals for ADR systems to cover all market sectors, and for an ODR (online dispute resolution) system covering cross-border e-commerce transactions²³. If these proposals are implemented, Member States would have to ensure that there was an alternative dispute resolution process in place for all sectors, including rail. Therefore, it should not be necessary to specify this through a revision to the Regulation.

Service quality reports

- 4.80 As discussed above, although overall compliance with the Regulation has been relatively good, the key exception is the requirement to produce service quality reports: many railway undertakings have not complied with the requirement to publish these reports and many of the reports that are published do not have the necessary content. We believe that this should primarily be addressed through enforcement - NEBs should verify that the reports are published and that their content is compliant with the Regulation, and take enforcement action if it is not.
- 4.81 Although Article 28 and Annex III of the Regulation provide clear guidance on the content of the service quality reports, they are not very specific as to the minimum standards required. For example, Annex III refers to 'customer satisfaction survey', but not what this survey should encompass, and therefore a quite minimal survey could be considered compliant.
- 4.82 In order to address this, the Commission has already provided guidance on the potential content for these reports²⁴, which describes a 'best practice' example for service quality standards and reports. We understand that some stakeholders have informed the Commission that they consider this excessively detailed. However, in our view this specifies a level of detail which still leaves reasonable discretion to the railway undertaking and State concerned and is therefore not excessive. As a comparison, the specification for the customer satisfaction survey specified is still significantly less detailed than the UK rail customer satisfaction survey (the National Passenger Survey) which is published and covers all domestic train operators.
- 4.83 However, we recommend that the Commission should review these guidelines to consider if there are any areas in which these could be simplified, and some provisions which may be inappropriate or unnecessary revised or removed. Annex III of the Regulation should then be amended to reflect these guidelines.
- 4.84 In particular, we suggest the following changes could be made:
- Delay on arrival: The guidelines specify categories of delay to report, starting at 60 minutes. However, rail delays are usually measured in terms of the proportion of trains arriving within 5-10 minutes. It should be sufficient for the

²³ COM(2011) 791/2

²⁴ Rail Service Quality Standards and Reports Publication Procedure and Contents

report to show the proportion of trains within 5 minutes and (to show the proportion of very long delays) within 60.

- Delay on departure: The guidelines specify reporting of both delay on departure as well as delay on arrival. In our view it is not necessary to report both; delay on arrival is most relevant to the passenger and therefore we suggest that this should be shown.
- Data for missed connections: This is included in the guidelines, but most railway undertakings would not be able to identify the proportion of planned connections missed, as many tickets are not specific to individual trains. Therefore we suggest this should be deleted.
- PRM assistance: The guidelines specify that the number of cases of assistance per category of service should be specified. However, as not all railway undertakings require PRM assistance to be pre-booked, it may not be necessary for them to record the number of times assistance has been provided. In any case, it should be the quality of the assistance service (measured for example in the proportion of requests for assistance that are met without delays or other problems), rather than the number of times assistance is provided, that is relevant to a service quality report.

- 4.85 In addition, we suggest that the second sentence of Article 28(2) be amended to make clear that the service quality report should cover all of the items specified in Annex III. Although in our view it is already reasonably clear that this is what is meant, the wording could be subject to other interpretations.

Issues requiring clarification

- 4.86 There are Articles in the Regulation whose interpretation is not clear, and there are some areas where it is not clear how the Regulation is consistent with Annex I. As discussed above, the most significant of these are:

- the extent, if any, of the exemption on payment of compensation or provision of assistance in cases of force majeure; and
- whether and how the rights defined in the case of delay apply in cases of missed connections.

- 4.87 We discuss these issues below and then summarise issues with other Articles of the Regulation.

Exemption on obligations in cases of force majeure

- 4.88 It should be clarified in what, if any, circumstances railway undertakings are exempted from their obligations under Articles 16-18 in cases of force majeure. We note the CJEU will provide an interpretation of the existing text, but this is an important policy issue and therefore ideally would be decided by policymakers rather than left to the Court to interpret.

- 4.89 The following options could be considered:

- a full exemption in cases of force majeure;
- exemption from payment of compensation and from provision of certain assistance, particularly accommodation;
- exemption from payment of compensation, but no other exemption;
- no exemption.

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4.90 None of the other passenger rights Regulations provide a complete exemption from provision of assistance in cases of force majeure. The bus/coach and maritime Regulations limit the right to accommodation in certain limited cases of force majeure, and the air transport Regulation exempts carriers from payment of monetary compensation, but not from other obligations.

4.91 As recently identified by the Advocate General²⁵, passengers are particularly vulnerable in cases of force majeure (or extraordinary circumstances). It would not be consistent with the general objective of improving consumer protection to exempt railway undertakings from the obligation to provide assistance in such circumstances. However, to avoid creating an unnecessary financial burden on the railway undertakings particularly for circumstances which are not within their control, and for consistency with the legislation in the air transport sector, we recommend that there should be an exemption from payment of compensation.

Missed connections

4.92 It is important to clarify whether and in what circumstances the provisions in Articles 16-18 apply in the event that the delay was caused by a missed connection. If missed connections were to be covered, it would also be necessary to clarify whether this applied where the passenger had purchased separate tickets for each sector, or only to journeys where there was a single ticket or contract covering both sectors. If coverage of missed connections was dependent on there being a single ticket or contract, it would need to be clarified what this meant, as railway undertakings sometimes issue two tickets even if the journey is apparently offered as a combined product.

4.93 Many potential rail journeys require connections: for example, it is not possible to travel from London to Amsterdam, or from Paris to Dusseldorf, without changing trains. Passengers' potential need for assistance may be greatest for these journeys: for example, if a train from London to Brussels is late and as a result a passenger misses the last train of the day to Amsterdam, the passenger will be stranded overnight, whereas if they journey was purely London-Brussels, they would not be. It would therefore significantly limit the benefit of the Regulation for passengers if it did not cover missed connections at all. Therefore we recommend that the Regulation should cover missed connections.

4.94 If missed connections are to be covered, this raises the issue of whether the Regulation should cover missed connections where the passenger has separate tickets for the two journeys. As noted above, partly due to issues of systems incompatibility, railway undertakings often do not sell through tickets for connecting journeys, particularly where these involve connections between services provided by different operators based in different Member States. Therefore, passengers making connecting journeys will often need to buy two tickets. This may deter them from making these journeys by rail at all. If protection in case of missed connections does not cover journeys where passengers have to purchase two tickets, that would be a significant limitation to the benefit it provided to passengers.

4.95 However, it is also important not to deter railway undertakings from offering through tickets by unnecessarily increasing the cost and difficulty of handling

²⁵ Case C-12/11, McDonagh v Ryanair

connections, or from operating financially marginal cross-border services that may carry a high proportion of connecting passengers. A reasonably well-informed passenger should also understand that if they plan to make a connecting journey, the risk of disruption is increased; the passenger can choose to mitigate this risk by, for example, adding additional time between connecting trains.

- 4.96 Therefore, although we recommend that the Regulation should cover missed connections even if the passenger has separate tickets, the rights in cases of missed connections should be more limited than the rights in case of delay to a specific train. As the passenger's main potential need is for assistance such as overnight accommodation if necessary, we suggest that there should be a right to assistance but not monetary compensation. We also suggest that the threshold for provision of assistance could be increased in cases of missed connections; for example there could be no right to refreshments unless the delay was at least 2 hours instead of 1 hour, reflecting the inherently greater risk to connecting journeys.
- 4.97 If the Regulation applies to missed connections where the passenger has different tickets for each journey, it would also be necessary to clarify which railway undertaking is responsible for providing the assistance that is required. We recommend that:
- the first railway undertaking, whose train was delayed or cancelled, should be responsible for provision of assistance; but
 - the second (and any subsequent) railway undertaking should be required to transport the passenger to their destination on the next service on which they have space, even though the passenger's original reservation was for an earlier train.

Other issues to be clarified

- 4.98 We also recommend that the following issues should be clarified:
- If it is clarified that there is at least some exemption in cases of force majeure, a definition of force majeure should be added. Article 32(2) of the CIV provides a definition but this could be incorporated into the main text of the Regulation.
 - It should be clarified whether and how suburban or regional services which cross borders can be exempted from the Regulation. As discussed above, it should also be clarified whether services which only cross borders to reach the immediate border station should be considered 'international' for the purposes of the Regulation, as they are sometimes not considered as such at present.
 - The definition of 'carrier' in Article 2 should be amended to be consistent with the definition used in the CIV.
 - The term 'comparable transport conditions' could be clarified, for example to make clear whether a passenger has a right to rerouting on a high speed train if their original ticket was for a conventional train.
 - The liability provisions should be clarified to ensure consistency between the Regulation and the Annex (we discuss this further below).
 - As well as clarifying that if a railway undertaking is liable for damage to mobility equipment this cannot be limited, the Regulation could clarify under which circumstances they are actually are liable.

- As discussed above, the second sentence of Article 28(2) should be clarified to avoid any doubt that the published service quality report has to cover all of the metrics in Annex III.

4.99 The Commission should also consider what the intention was behind some other Articles, where the obligations currently defined in the Regulation are so limited that they have little or no impact. Although the provisions of these Articles are not necessarily unclear, it is not obvious what they add. In particular the following should be reviewed:

- Article 5 on carriage of bicycles: It is not clear that this Article actually creates any obligation to carry bicycles. If it is not intended to create any obligation, it should be deleted.
- Article 9(1) on through tickets: Similarly, it is not clear that this creates any obligation to offer through tickets or reservations.
- Article 21(1) on compliance with PRM TSI: It is not clear whether this creates any new obligation - railway undertakings are already required to comply with the TSI for new and upgraded rolling stock and stations. The Article may have the effect of giving passengers a direct right of recourse against railway undertakings for failure to comply with the TSI, but if this was the (only) intention, this should be clarified. Another possibility is that the provision is aimed at extending the scope of the TSI to the non Trans-European Network (TEN-T) for rail, but again if this is the case it should be made clear.
- Article 26 on personal security: Although this does create some obligation (for example for public authorities and railway undertakings to cooperate and exchange information), it is still quite limited and it would be surprising if public authorities and railway undertakings were not already doing this.

Issues not fully covered by the current Regulation

4.100 In addition to the issues requiring clarification, there are some issues which are not covered or only partially covered by the existing Regulation, and which could be addressed.

Liability and insurance

4.101 The Regulation only partially addresses the issues of railway undertakings' liability, and the insurance they must have to cover this liability. For example, liability in cases of death of passengers is defined in Annex I, but liability in cases of injury is left to national law; and although Article 25 defines that if a railway undertaking is liable for damage to mobility equipment there is no limit to this liability, it does not actually define that they are liable.

4.102 To ensure a level playing field, to protect passengers, and to facilitate the operation of cross-border services, provisions on railway undertakings' liability could be defined at EU level. This is particularly important for international journeys; at present, if there was an incident on a cross-border service, different regimes would apply and potentially there could be a conflict between these.

4.103 The Regulation (or other appropriate legislation) should also be more specific about the level of insurance that railway undertakings should have to cover their liabilities. The current Regulation defines that railway undertakings must have 'adequate' insurance but does not define what this means, and (as discussed

above) the current level of coverage appears to be inadequate in some Member States.

- 4.104 The minimum insurance could be defined in terms of either:
- An obligation to have a certain amount of insurance per passenger carried: This would be equivalent to the approach taken by Regulation 785/2004 in the air transport sector, which defines that air carriers must have insurance for liability to passengers' of at least 250,000 Special Drawing Rights per passenger. The amount of insurance per passenger should take into account the maximum liability per passenger of the railway undertaking under national law of the States to which the railway undertaking operates, or the Regulation if in the future it fully defines liability.
 - An obligation to have a certain amount of insurance per incident: This would be more equivalent to the approach currently adopted by railway undertakings. The specified amount should take into account the realistic maximum total liability that railway undertakings could have, given the provisions in national law on liability.
- 4.105 The amount of insurance required depends on the liability that railway undertakings have, and therefore it would be easier to define common requirements on insurance if liability was fully harmonised. This issue is discussed further in appendix E.
- Price discrimination by place of residence*
- 4.106 Whilst price discrimination based on place of residence may be unusual in the rail transport sector, we have identified cases where it does occur. For consistency with basic principles of EU law as and also for consistency with the requirements in the air transport sector defined in Regulation 1008/2008, we recommend that a prohibition on price discrimination based on State of residence should also be added to the Regulation.
- 4.107 In principle, we would recommend that this should be extended to cover the discounts offered to PRMs and accompanying passengers, as it does not appear justifiable that (for example) a Spanish resident with a disability travelling in Spain, even if far from their place residence, should receive a discount whereas a French resident would not. However, there would be significant practical issues in implementing this:
- **There is no universally accepted identity card for PRMs:** Each Member State has its own means of identification for PRMs, and these are often not mutually recognised.
 - **Different Member States have different systems for categorising disability:** PRM discounts are generally not available to all PRMs: a person must usually have a certain level of disability to be eligible. Many countries assigns PRMs a 'percentage disability', but it is not clear to what extent these systems correspond with one another, or how a resident of a country without such a scheme is able to prove their classification.
- 4.108 Therefore, if this was to be introduced, it would need to be accompanied by measures either to introduce a common means of PRM certification and identification, or some form of mutual recognition of this. This might be difficult

to implement given the different approaches in different Member States, and it would raise issues beyond the rail transport sector.

- 4.109 Any prohibition on price discrimination based on place of residence should not prevent local or regional authorities from offering discounts to specific categories of people where there is an objective justification for doing so. This could include discounts for students or senior citizens for travel in the city or region in which they live, to enable them to access essential facilities such as schools or hospitals. However, it is not clear that there should ever need to be a national system of discounts in order to achieve this objective, except possibly in the smallest Member States such as Malta or Luxembourg.

Overcrowding

- 4.110 One NEB told us that it considers overcrowding to be covered by the current Regulation, as in its national language the word ‘security’ encompasses ‘safety’ and it considers overcrowding could be a safety issue. However, in most language versions of the Regulation it is clear that overcrowding is not covered. The Commission has asked us to comment on whether it should be.
- 4.111 Overcrowding could clearly be an important issue for rail passengers, and it does not matter if other aspects of service quality are good if the passenger has to stand for a prolonged period. However, Member States and railway undertakings have limited options to address overcrowding; this could only be addressed by:
- provision of additional rolling stock or infrastructure, which would incur substantial costs; or
 - increasing fares, at least at busy times, to reduce the numbers of people travelling.
- 4.112 It may be that in some cases the preferred solution would be to accept a degree of overcrowding, as the necessary investment in rolling stock or infrastructure would be unaffordable, and it is considered unacceptable to increase fares. In addition, overcrowding is difficult to define; for a long distance journey most passengers would expect to obtain a seat but for a short journey at peak times they may consider it acceptable to stand.
- 4.113 For these reasons we consider it is impractical for an EU Regulation to include requirements on overcrowding; national and regional governments are in a better position to do this. However, as it is an important issue of service quality, railway undertakings could be required to report on overcrowding in their service quality reports. We discuss in paragraphs 4.83 to 4.85 how the content of these reports could be better defined.

Other issues addressed in Regulations in other sectors

- 4.114 The equivalent Regulation in the air transport sector defines rights in cases of denied boarding and downgrading. In theory these incidents could occur in the rail transport sector: for example, we have identified one railway undertaking that sells a special enhanced first class and offers compensation where it is not available on the train concerned.
- 4.115 However, the issues of denied boarding and downgrading have not been raised in any of the interviews we have undertaken with stakeholders. As these circumstances are usually a consequence of overbooking, they are less likely to

occur in the rail transport sector than in the air transport sector, because load factors are usually lower in rail, and also where a passenger does have a reservation it is usually for a specific seat.

- 4.116 Downgrading and denied boarding would, in any case, be indirectly covered by other Community consumer protection legislation. If the contract denied the passenger the right to compensation in these cases, this would be considered an unfair contract term and therefore prohibited by Directive 93/13/EEC.
- 4.117 Therefore we do not recommend any equivalent provisions need to be introduced in the rail sector.

APPENDIX

A

DISCUSSION OF POLICY OBJECTIVES

A1 POLICY OBJECTIVES

Introduction

A1.1 The Terms of Reference state that this study should determine the extent to which the measures defined by Regulation 1371/2007 ('the Regulation') are appropriate to achieve its objectives. In order to do this, it is important to analyse the objectives of the Regulation. By presenting the objectives of the Regulation clearly, it is then possible to assess its effectiveness. We also summarise the right for the Community to take action in this area.

Objectives of the Regulation

A1.2 The objectives of the Regulation can be summarised as:

- I To increase the share of rail transport in relation to other modes of transport** by improving the quality and effectiveness of rail passenger services. This includes a sub-objective of increasing the ease of use of rail services. The Commission seeks to increase the share of rail transport in order to increase passenger mobility, to encourage better use of the existing rail infrastructure, and also to help cut emissions. There are many Articles of the Regulation that relate to this objective, including those relating to information, contracts, tickets, liability and insurance, delays / cancellations / missed connections, and service quality standards. These Articles provide for minimum standards which, if properly implemented, should increase the attractiveness of rail to European consumers (although potentially also increase its cost).
- I To increase consumer protection available for rail passengers** by granting a right to assistance and compensation for disrupted journeys, requiring railway undertakings to receive passenger complaints and respond to them within set deadlines.
- I To ensure the safety and security of passengers**, by requiring railway undertakings to be adequately insured, to take measures to ensure passenger security, and to relieve accident victims and their dependents of short-term financial concerns after incidents.
- I To increase the information available to rail passengers**, both before and during travel, and to make this information transferable between Member States.
- I To ensure coherence between the rights of passengers by rail and by other modes**, and with existing legislation for rail.
- I To ensure that disabled persons and persons of reduced mobility (PRM) should have opportunities for rail travel comparable to those of other citizens.** This is intended to be achieved by encouraging railway undertakings and station managers to make facilities and rolling stock accessible where possible, by preventing railway undertakings from refusing to carry PRMs where it is possible, and by requiring them to provide assistance.

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- A1.3 The preamble to the Regulation refers to the Consumer Policy Strategy 2002-2006²⁶, and we have therefore reviewed this strategy for consistency with the Regulation. The objectives above complement the Strategy's three mid-term objectives which are:
- a high common level of consumer protection;
 - effective enforcement of consumer protection rules; and
 - involvement of consumer organisations in EU policies.
- A1.4 Since the Regulation was published, a new Commission policy document has been published, Consumer Policy Strategy 2007-2013²⁷. We have also reviewed this document for consistency with the Regulation. Its objectives also complement those of the Regulation:
- to empower EU consumers (for example through accurate information, market transparency and effective protection);
 - to enhance EU consumers' welfare in terms of price, choice, quality, diversity, affordability and safety; and
 - to protect consumers effectively from the serious risks and threats that they cannot tackle as individuals.
- A1.5 The objectives of the Regulation are also consistent with the initiatives relating to passenger rights set out in the most recent (2011) Transport White Paper *Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system*²⁸:
- Develop a uniform interpretation of EU Law on passenger rights and a harmonised and effective enforcement, to ensure both a level playing field for the industry and a European standard of protection for the citizens.
 - Assemble common principles applicable to passengers' rights in all transport modes (Charter of basic rights), notably the 'right to be informed', and further clarify existing rights. At a later stage, consider the adoption of a single EU framework Regulation covering passenger rights for all modes of transports (EU Codex).
 - Improve the quality of transport for elderly people, Passengers with Reduced Mobility and for disabled passengers, including better accessibility of infrastructure.
 - Complete the established legislative framework on passenger rights with measures covering passengers on multimodal journeys with integrated tickets under a single purchase contract as well as in the event of transport operator's bankruptcy.

²⁶ COM (2002) 208 final

²⁷ COM (2007) 99 final

²⁸ COM (2011) 144 final

- I Improve the level playing field at international level through the inclusion of care quality standards in bilateral and multilateral agreements for all modes of transport, with a view to further passengers' rights also in the international context.

The right for the Community to act

- A1.6 Any action taken by the Community must comply with the terms of the European Treaties. There are several Articles which justify Community action in this area. Article 169 of the Treaty on the Functioning of the European Union (TFEU) (formerly Article 153 of the Treaty on European Union) states a justification for actions in the interests of consumers:
- “In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.”*
- A1.7 Article 114 TFEU also refers to consumer protection:
- “1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*
- 3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.”*
- A1.8 Article 10 TFEU sets out the Union's principle regarding discrimination, which makes reference to disabled persons:
- “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”*
- A1.9 Article 19 TFEU defines procedures which may be followed to combat discrimination:
- “1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”*
- A1.10 On the basis of these Articles, the European Union is empowered to contribute to the attainment of the objectives above by adopting measures towards the completion of the internal market, which support, supplement and monitor the policy pursued by the Member States, and which combat discrimination on the basis of disability. Such measures include the Regulation.

APPENDIX

B

LITERATURE REVIEW

B1 LITERATURE REVIEW

B1.1 We searched for work by other parties relevant to the Regulation, seeking to identify any issues which could inform the study. in particular to inform discussions with stakeholders. We searched for the following:

- relevant documents published by the Commission and other European bodies (for example, Communications);
- economic and legal studies; and
- statistics relating to the issues addressed by the Regulation, for example on passenger satisfaction with rail services.

B1.2 The following sections provide a summary of the texts covered by our literature review. The literature reviewed has been taken into account in the conclusions presented in chapter 3, but in practice the information which could be obtained from the literature review was limited; most of the information which has been used for the evaluation was obtained from the interviews with stakeholders and the desk research.

Policy documents and Communications

Community Consumer Policy Strategy 2002-2006

B1.3 The Consumer Policy Strategy 2000-2006 was aimed at establishing a high common level of consumer protection, effective enforcement of consumer protection rules and involvement of consumer organisations in EU policies (see discussion in Appendix B).

B1.4 As indicated by Karsten (2007)²⁹, the Consumer Policy Strategy 2002-2006 envisaged an extension of consumer protection measures from air transport to other modes of transport and set out six measures to be taken:

- Commission proposal for a Regulation concerning requirements relating to air transport contracts;
- produce consumer reports on air transport service quality;
- Commission proposals extending Community measures protecting air passengers' rights to other modes of transport;
- Commission proposal for a Regulation on international rail passenger rights;
- promotion of rail transport users' organisations; and
- promotion of voluntary actions by rail companies to improve service quality and information.

Community Consumer Policy Strategy 2007-2013

B1.5 The EU Consumer Policy Strategy 2007-2013³⁰ sets out general objectives of EU consumer policy: it aims to empower EU consumers, enhance their welfare, and protect them effectively from risks and threats (see appendix B). However, other than defining these objectives, the Communication does not provide specific

²⁹ Karsten J. (2007) Passengers, consumers, and travellers: The rise of passenger rights in EC transport law and its repercussions for Community consumer law and policy. In *Journal of Consumer Policy* (2007) 30:117-136

³⁰ COM(2007) 99 final

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information which is relevant given the scope of this study; in particular, it makes no specific reference to rail transport.

*A European vision for Passengers: Communication on Passenger Rights in all transport modes*³¹

- B1.6 This document aims at helping:
- carriers towards a more coherent and effective application of EU law;
 - national authorities towards a harmonised enforcement of passenger protection across all modes; and
 - passengers towards a better understanding of what they can legitimately expect (and what they cannot) as minimum quality service when travelling.
- B1.7 The Communication sets out the ten fundamental rights that form the core of EU passenger rights:
- right to non-discrimination in access to transport;
 - right to mobility: accessibility and assistance at no additional cost for disabled passengers and passengers with reduced mobility;
 - right to information before purchase and at the various stages of travel, notably in case of disruption;
 - right to decide not to travel (reimbursement of the full cost of the ticket) when the trip is not carried out as planned;
 - right to the fulfilment of the transport contract in case of disruption (rerouting and rebooking);
 - right to get assistance in cases of long delay at departure or at connecting points;
 - right to compensation under certain circumstances;
 - definition of carrier liability towards passengers and their baggage;
 - right to a quick and accessible system of complaint handling; and
 - right to full application and effective enforcement of EU law.
- B1.8 Most of these rights are directly reflected in the text of the Regulation.

Other Commission documents

*DG TREN report: Insurance of Railway Undertakings*³²

- B1.9 This intention of this study was to provide an analysis of the barriers to fair rail access to the railway insurance market. It covered 25 EU Member States and focused on different categories of railway undertakings (incumbent and new entrants, domestic and international, freight and passenger operators). It also investigated the problems faced by small and non-incumbent RUs in obtaining sufficient insurance coverage for accessing the rail infrastructure.
- B1.10 We have reviewed the study but concluded that it does not have any direct impact on the issues which the Regulation seeks to address. The study found several problems relating to access to railway insurance, which may restrict market

³¹ COM(2011) 898 final

³² European Commission, DG TREN (2006) *Insurance of Railway Undertakings. Final report.*

access; this is a particular problem for cross-border services. This could reduce competition in the rail market, and therefore potentially discourage compliance with the measures in the Regulation relating to service quality. However this does not affect the assessment undertaken for the study. The only requirements that the Regulation sets out in relation to insurance are that the insurance should cover the liabilities under the Regulation, and that the Commission should bring forward a report and if necessary proposal on minimum insurance requirements by December 2010.

- B1.11 The study found significant inconsistencies in insurance requirements placed on railway undertakings across Europe. The requirement set by Directive 95/18 that railway undertakings must seek adequate coverage in order to obtain a license led to considerable differences between Member States, owing to different interpretations of the term “adequate cover”, and variations in what adequate cover would be, partly reflecting income: the financial damage which can arise from an accident depends partly on price and income levels in the State concerned. In addition, in some States the level of coverage required is determined by the licensing authority on a case by case basis, which may raise issues of transparency and non-discrimination.

*Trans-European Conventional Rail System: Subsystem Telematics Applications for Passengers*³³

- B1.12 The Interoperability Unit (IU) report *Trans-European Conventional Rail System: Subsystem Telematics Applications for Passengers* is a technical document, which principally describes the process followed by the working party in developing the TAP TSI. There are parts of the document that directly address the interface between the TAP TSI and Regulation 1371/2007; these are described and referenced below. The rest of the document is less relevant to this study.
- B1.13 Table 10 (page 32) specifically addresses how each of the obligations of Regulation 1371/2007 map to the Basic Parameters (BPs) of the TAP TSI. This is a result of the mandate for the TAP TSI stating that it “should take into account the latest development of the European Rail Passengers’ Rights Regulation.” A particular outcome of this mandate was that the working party “took special care that the ticket issuing and information provision requirements of Article 10 and Annex II of the European Passengers’ Rights Regulation can be fulfilled by the technical means developed in the BPs of Tap TSI.”
- B1.14 The report explains that in order to respect the application of Regulation 1371/2007, the working party met with ETSA and ECTAA to assess the impact of the implementation of the TAP TSI, and included the relevant comments of these organisation in the TAP TSI “to a reasonable extent.” The report also responds to specific working queries that have been raised by Member States, and some of these are relevant to Regulation 1371/2007. In particular, it clarifies that the “ERA expects that there will be basically no difference between the scope of Rail Passengers’ Rights Regulation and the TAP TSI.”

³³ ERA Interoperability Unit (2010), *Trans-European Conventional Rail System: Subsystem Telematics Applications for Passengers*

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Economic and legal studies

Study on the implementation and future extension of the PRM TSI³⁴

- B1.15 This study investigated the implementation of the PRM TSI, based on the results of desk research and surveys undertaken in 7 EU Member States (Austria, Czech Republic, Germany, Netherlands, Poland, Spain and UK). The aim of the research was also to assess the impact of implementing the PRM TSI on ridership, cost and investments, as well as analysing the factors which have contributed to this level of implementation.
- B1.16 The survey gathered the views of different stakeholders, including competent authorities, national safety authorities (NSAs), infrastructure managers, railway undertakings, notified bodies, passenger groups, PRM groups and manufacturers.
- B1.17 The key areas looked at in the report were:
- the incorporation of the PRM TSI;
 - the Industry Structure, Roles and Responsibilities;
 - the approach adopted in Strategic Planning;
 - the conditions of application of the PRM TSI; and
 - the infrastructure and rolling stock.
- B1.18 The study identified different approaches with respect to the incorporation of the PRM TSI into Member States' national law:
- Czech Republic, Spain and UK had adopted an active approach, meaning that they had comprehensively adopted the requirements into national law with few changes or adaptations.
 - Austria, Germany and the Netherlands had adopted a passive approach. These Member States have a single piece of rail legislation (e.g. a Railway Act) which may simply refer to a requirement to implement all applicable EU law. However, there may still be conflict between national and European legislation because it may not be clear in national legislation what 'major' work, requiring compliance with the TSI, is.
- B1.19 In relation to different industry structures, Booz found that in countries with a competitive industry such as the UK, national authorities have had to provide guidance and set standards in order to achieve consistency throughout the market. In new Member States, which are in the process of restructuring their industry, there are less clear views on the boundaries of NSAs' responsibility for implementation of the PRM TSI. As a consequence, there is no clear guidance from NSAs on issues such as access to stations and areas within stations, as NSAs consider this to be the responsibility of the national entity that regulates all forms of public entities.
- B1.20 A further problem identifies is the ownership of stations and surrounding infrastructure. For example, in Poland and the Czech Republic, the station building, platforms, and the station surroundings are often owned by different companies. This means that there is a need for coordination to minimise the risk

³⁴ Booz & Company for ERA (2011), *Study on the implementation and future extension of the PRM TSI*. Final Report

that some infrastructure is enhanced but the benefits are negated because other infrastructure is not, such as PRM compliant platforms in stations with non PRM compliant buildings and stairs. The role of strategic planning is identified as core for the implementation of the PRM TSI, coupled with a timetable for applying the requirements on existing infrastructure.

- B1.21 The consultant also found differing levels of understanding, interpretation and definition on the conditions of application of the PRM TSI across Member States. The PRM TSI is only applicable when the project is on the TEN and the project is classified as major construction, upgrade or renewal. However, Member States had different interpretations of this; in most cases, this has not affected the overall approach to implementation of accessibility more generally just the formal adoption of the PRM TSI and its certification.
- B1.22 Funding is a key constraint to the implementation of the TSI, particularly adaption of existing rolling stock and infrastructure, and the consultant found that in most cases, the availability of funds was linked to a national policy objective rather than to the fulfilment of the PRM TSI. In countries that are reliant on external sources of funds (e.g. the EU structural funds), there were insufficient funds available to implement accessibility improvement programmes, either to comply with the PRM TSI, or national objectives.
- B1.23 Progress with implementation of the TSI varied between infrastructure and rolling stock:
- **Infrastructure:** The consultant found that the level of implementation of the PRM TSI across infrastructure projects was relatively low in all seven Member States, partly because the TSI itself entered into force quite recently, and partly because of the scope and implementation of infrastructure upgrades vary greatly.
 - **Rolling stock:** Only a small proportion of existing rolling stock was compliant with the PRM TSI. Of the case study States, Germany, Austria, the Czech Republic and Poland had no plans to adapt their existing rolling stock to increase its levels of accessibility; conversion in these Member States will only occur through normal mid-life refurbishment or asset replacement. However, all new rolling stock will be compliant with the PRM TSI as manufacturers now have standardised designs which meet the requirements of the PRM TSI. In contrast, the UK will require all rolling stock in service to be PRM TSI compliant by 2020³⁵. Netherlands and Spain have also developed programmes to increase the accessibility of their respective rolling stock fleets by 2020.
- B1.24 Overall, it is difficult to draw conclusions across Member States, but there are clearly a number of factor that affect the implementation of the PRM TSI, the most significant of which are the availability of funds and the threshold adopted in national legislation for the definition of major projects.
- B1.25 We did not identify any other economic or legal studies which were relevant to the issues addressed by the Regulation. This may be because the liberalisation of the

³⁵ Rail Vehicle Accessibility Regulations (RVAR) 2010, which amended RVAR 1998

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rail passenger sector is at an early stage, and therefore recent studies have focussed more on market structure and entry, rather than service quality.

Statistics

*Flash Eurobarometer: Survey on passengers' satisfaction with rail services*³⁶

- B1.26 The Flash Eurobarometer report Survey on passengers' satisfaction with rail services sets out the results of surveys undertaken in 25 EU Member States (only excluding Malta and Cyprus, which do not have rail networks) gauging passengers' satisfaction with various aspects of rail travel. In addition to questions about who the respondents were, groups of questions were asked about train stations, and about rail services. Some of these questions have no direct application to Regulation 1371/2007 (for example, whether the passenger is satisfied with the length of time the journey was scheduled to take). However, others do relate more closely to standards that ought to be provided by the Regulation. The most relevant of these are customer satisfaction relating to:
- provision of information about train schedules/platforms;
 - ease of buying tickets;
 - ease and accessibility of any complaint handling mechanisms;
 - provision of information during the journey, in particular in the case of delay;
 - personal security in stations; and
 - assistance and information for disabled or elderly people in station and in rail cars.
- B1.27 The EU-wide average net customer satisfaction (i.e. costumers rather or very satisfied minus those rather or very dissatisfied) with the five categories above ranges from +5% for assistance and information for disabled or elderly people³⁷ to +61% for ease of purchasing tickets. The provision of complaint handling mechanisms also scored poorly, with only +10% net satisfaction. Taking the results at face value, complaint handling and provision of information to disabled passengers and PRMs appear to be the areas in which satisfaction is currently lowest and, therefore, areas in which the Regulation has the greatest scope to improve consumer welfare.
- B1.28 It should be noted that the survey is based on a relatively small sample, and (as noted above) for some questions a high proportion of those questioned did not respond. This is likely to reduce its relevance to areas of the Regulation which affect fewer people (e.g. provisions for disabled persons and PRMs). In addition, the survey will not reflect variations between different routes or operators within States, which can be significant: the regular National Passenger Survey undertaken in the UK shows satisfaction (in absolute value) varies considerably between operators: from 77% with the worst-performing operator to 95% with the best³⁸.

³⁶ Gallup (2011), *Flash Eurobarometer: Survey on passengers' satisfaction with rail services*

³⁷ This category had on average 38% not responding, and it should also be noted that the Regulation does not specifically refer to the elderly (although some elderly persons will have reduced mobility).

³⁸ Passenger Focus (2011): National Passenger Survey, Autumn 2011 Main Report

APPENDIX

C

COMPARISON WITH OTHER PASSENGER RIGHTS REGULATIONS

C1 COMPARISON WITH OTHER PASSENGER RIGHTS REGULATIONS

- C1.1 European law now defines passenger rights for all main transport sectors:
- **Air:** Regulation 261/2004 on compensation and assistance in cases of disruption; Regulation 889/2002 on carrier liability; and Regulation 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air;
 - **Sea and inland waterway:** Regulation 1177/2010 concerning the rights of passengers; and
 - **Bus and coach:** Regulation 181/2011 concerning the rights of passengers.
- C1.2 This protection for passengers for different modes of transport was introduced via different legislative instruments at different times, and as a result there are differences in the protection available. Operational differences between modes can justify some of these differences: aircraft are significantly more difficult to repair or replace than trains or coaches, and therefore the impacts of technical problems may be greater on air passengers than on those travelling by other modes. However, there are also differences in some other circumstances, for which the rationale is not clear.
- C1.3 The most significant difference between these Regulations is the approach to compensation: Regulation 1371/2007 (as well as the Regulations for maritime and bus/coach transport) defines compensation as a function of the ticket price. In contrast, Regulation 261/2004 grants passengers the right to flat rate compensation of €250 to €600 in the case of cancellation where there are no extraordinary circumstances (and, as identified in the decision of the CJEU in the *Sturgeon and Bock*³⁹ case, in the case of long delay).
- C1.4 The other significant differences between the provisions of Regulation 1371/2007 and the other passenger rights' Regulations are:
- **Time thresholds:** The time threshold for right to assistance and care set for rail passengers is more generous compared with other transport modes: rail passengers may be eligible for compensation after a delay of 1 hour, whereas bus or coach passengers may be eligible for care or assistance after a delay of 90 minutes and air passengers after 2-4 hours depending on flight length.
 - **Hotel accommodation:** In the event a passenger is stranded overnight and therefore hotel accommodation is needed, the more recent bus/coach and maritime Regulations allow carriers to limit the cost of accommodation. Both limit the cost of accommodation to €80 per night, with the number of nights limited to two in the case of Regulation 181/2011 and three under 1177/2010. These Regulations also exempt carriers from providing accommodation if it can be proven that weather conditions (and in the case of Regulation 181/2011, natural disasters) endangered the safe operation of services. For rail (and air) transport, there is no limit.
 - **Circumstances when compensation is payable:** The circumstances in which compensation is paid are different. Regulation 1371/2007 grants compensation based on delay to the journey, but only if the ticket has not been reimbursed. It does not explicitly distinguish between causes of disruption or whether it is

³⁹ Joined Cases C-402/07 and C-432/07

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within the carrier's control. Regulation 181/2011 requires compensation (in addition to reimbursement) to be paid only if the passenger has not been offered the choice between continuation / re-routing and reimbursement. Under all Regulations other than Regulation 261/2004, the amount of any compensation is determined only by the delay in arrival at the passenger's final destination; no distinction is made between delay and cancellation.

- **Extraordinary circumstances exemption:** There is an exemption from payment of compensation in the case of extraordinary circumstances in Regulations 261/2004 and 1177/2010, but not in Regulation 1371/2007⁴⁰.
- **Liability to passengers:** The limits on liability in the Regulations for bus, coach and air transport are different. For example Regulation 1371/2007 limits rail operators' liability for deaths to 175,000 units of account (€161,000); Regulation 889/2002 limits air carriers' liability to 113,100 SDRs (€134,000); and Regulation 181/2011 limits bus operators' liability to a minimum of €220,000. Regulation 1177/2010, for maritime transport, does not address liability at all.
- **Liability for mobility equipment:** In contrast to air transport, rail operators' liability is unlimited with respect to damage to mobility equipment (although this is not completely clear - see chapter 3 for discussion).
- **Personal security:** Regulation 1371/2007, in contrast to the Regulations covering other transport modes, defines that operators must take adequate measures to ensure passengers' personal security.
- **Service quality standards:** Regulation 1371/2007 is the only passenger rights' Regulation requiring operators to publish their performance against service quality standards. Regulation 1107/2006 and 1177/2010 require airports (not airlines) and maritime operators to publish service quality standards for assistance to PRMs, but not their performance against these standards.

C1.5 In contrast, the rights defined with respect to assistance for disabled passengers and passengers with reduced mobility are quite similar.

C1.6 A detailed comparison of selected provisions of the Regulation is provided below in a table setting out the provisions of the different pieces of legislation, organised by different areas of protection.

⁴⁰ Note that this is subject to a reference to the CJEU (Case C-509/11) in relation to whether the carrier can rely on the exemption in Article 32(2) of Annex I to the Regulation, or the grounds for exclusion for other modes.

Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
Information	Obligation of operator to provide information on rights under Regulation	Must be provided when selling ticket	Notice must be published at check-in desk, and provided in event of incident. NEBs have obligation to inform PRMs of their rights.	Must be published on board and in ports	Must be provided at latest on departure, and at terminals and on internet
Liability and security	Right to immediate assistance in case of death or injury	At least €21,000 in event of death	At least 16,000 SDRs (€19,000) in the event of death or injury	N/A	No
	Right to compensation in case of death or injury	Necessary costs following death, support for any dependents of passenger, up to national limit of at least 175,000 units of account (€161,000)	Carriers are prohibited from contesting claims of up to 113,100 SDRs (€134,000)	N/A	Necessary costs following death, support for any dependents of passenger, up to national limit of at least €220,000
	Right to compensation when baggage is lost or damaged	Up to 1,400 units of account (€1,285) per piece	Up to 1,131 SDRs (€1,344)	N/A	Up to €1,200 per piece
	Obligation of operator to ensure passengers' personal security	Must take adequate measures	No	N/A	N/A
	Liability of operator for passenger safety, and obligation to have insurance to cover this	Yes	Obligation for insurance (defined in detail in Regulation 785/2004)	N/A	N/A
Delays / cancellations / missed	Right to assistance/care (food and drink)	For delays of over 60 minutes, and where available or can	N/A	For delays of over 90 minutes, and where available or can	For journey of over 3 hours, where delay is over 90 minutes, and where

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Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
connections		reasonably be supplied		reasonably be supplied	available or can reasonably be supplied
	Right to accommodation where delay is overnight	Yes, with no limitations	Yes, with no limitations	Limited to three nights, maximum of €80 per night. No right where cancellation or delay due to severe weather conditions.	Limited to two nights, maximum of €80 per night. No right where cancellation or delay due to severe weather conditions or natural disasters. For journeys of over 3 hours only.
	Right to alternative	Choice between reimbursement, rebooking and re-routing under comparable transport conditions	Choice between reimbursement, rebooking and re-routing under comparable transport conditions	Choice between reimbursement and re-routing under comparable conditions	Choice between reimbursement and re-routing under comparable conditions
	Right to compensation	Where reimbursement not accepted, right to compensation varying between 25% of ticket price for short delays (1-2 hours) and 50% if longer	For cancellation causing delay over 2 hours, and delays over 3 hours, between €250 and €600 (depending on length of journey), but not paid if extraordinary circumstances can be proved	In event of delayed arrival at destination. Varies between 25% of ticket price for short delays (delay is approximately 25% of planned journey time) and 50% (for delay of 50%). Does not apply in the case of extraordinary circumstances or severe weather conditions.	Compensation of 50% of ticket price if choice between continuation / re-routing and reimbursement not offered

Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
PRMs	Access to services and assistance for disabled persons and persons with reduced mobility	Yes	Yes	Yes	Yes
	Circumstances under which carriage can be refused	If it would contravene access rules	To meet safety requirements set by law or authority, or where physically impossible	To meet safety requirements set by law or authority, or where physically impossible	To meet safety requirements set by law or authority, or where physically impossible
	Requirement for operator to provide training to staff	No	Disability awareness or assistance training, depending on role of staff All new staff must have 'disability-related' training	Disability awareness or assistance training, depending on role of staff	Disability awareness or assistance training, depending on role of staff
	Operator obliged to provide accessibility information	Upon request	Safety rules must be publically available	Access conditions must be publically available	Access conditions must be made publically available, physically or on the internet, and on request of passenger
	Right to compensation for damage to mobility equipment	Unlimited	In accordance with law	Up to replacement or repair cost of damaged equipment	Up to replacement or repair cost of damaged equipment
Service quality	Obligation for operators to establish complaint handling mechanisms regarding violations of these rights	Yes, initial reply required within one month and final reply within three months	No requirement	Yes, initial reply required within one month and final reply within two months	Yes, initial reply required within one month and final reply within three months

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Area	Right granted	Rail	Air	Maritime	Bus and coach
		<i>Regulation 1371/2007</i>	<i>Regulations 889/2002, 261/2004 and 1107/2006</i>	<i>Regulation 1177/2010</i>	<i>Regulation 181/2011</i>
	Obligation for operators to establish service quality standards, and to publish their performance against them	Yes. Publication includes data on complaints received	Only for PRM services: Airports required to publish quality standards (but not explicitly required to publish performance against them) No requirement for airlines	Operators required to publish quality standards with respect to passengers with reduced mobility, but not explicitly required to publish performance against them. No requirement for other service quality issues.	No
Enforcement bodies	Independence	Independent from operators in organisation, funding decisions, legal structure, decision-making	Not required	Independent of commercial interests in terms of organisation, funding decisions, legal structure and decision-making	Independent from operators in organisation, funding decisions, legal structure, decision-making
	Where complaints should be made	To any NEB, no obligation to transfer complaint but general obligation for NEBs to co-operate	For liability: no right to complain. For delays, cancellations: To any NEB, no obligation to transfer complaint PRM issues: To any NEB, but complaints must be transferred to NEB with responsibility for incident	To any NEB, no obligation to transfer complaint but general obligation for NEBs to co-operate	To any NEB, no obligation to transfer complaint, but general obligation for NEBs to co-operate

APPENDIX

D

LIST OF ACRONYMS

D1 LIST OF ACRONYMS

ADR	Alternative Dispute Resolution
CIRSRT	Computerised Information and Reservation System for Rail Transport
CJEU	Court of Justice of the European Union
CoC	Conditions of Carriage
COTIF	Convention concerning International Carriage by Rail <ul style="list-style-type: none"> ■ A set of international rail standards applied by its Member States (generally in Europe, North Africa and the Middle East)
EDF	European Disability Federation
ERA	European Railway Agency
GCC-CIV/PRR	General Conditions of Carriage for Rail Passengers <ul style="list-style-type: none"> ■ The appendix of COTIF relating to passenger rail travel
IM	Infrastructure Manager
IRT	Integrated Reservational Ticketing <ul style="list-style-type: none"> ■ A classification of ticket only valid on a specified service
ISO	International Organisation for Standardization
NEB	National Enforcement Body
NRT	Non Reservational Ticketing <ul style="list-style-type: none"> ■ A classification of ticket where no reservation is made and the ticket is valid on all services
PRM	Passenger with Reduced Mobility
PRM TSI	Passenger with Reduced Mobility Technical Specifications for Interoperability
PSC	Public Service contract
SMS	Short Messaging Service
TAP TSI	Telematics Applications for Passenger Services Technical Specifications for Interoperability

APPENDIX

E

INSURANCE OF RAILWAY UNDERTAKINGS

E1 INSURANCE OF RAILWAY UNDERTAKINGS

National legislation on insurance and liability

- E1.1 Article 12 of the Regulation requires each railway undertaking to ‘be adequately insured or to make equivalent arrangements for cover of its liabilities’ under the Regulation. The Regulation does not specify what adequate insurance should mean, and therefore what level of cover (in terms of monetary value) is required. Furthermore, it does not even require insurance, stating that operators can make other suitable arrangements to cover these liabilities. In contrast, Article 9 of Directive 95/18/EC as modified by Directive 2001/13/EC, requires that railway undertakings are appropriately insured, or that they are in the process of obtaining that insurance, as a condition for obtaining a licence.
- E1.2 In addition to the licencing requirement, a number of national network statements also identify the level of insurance that an operator must have to be able to book paths on the network.
- E1.3 Since the requirement in the Regulation is that railway undertakings have adequate insurance to cover their liabilities, the level of insurance that they need depends on the liability that they are potentially exposed to. The Regulation only partly defines the liability of railway undertakings: for example, although it defines a minimum liability for death of passengers in rail accidents, the actual level of liability, the scope of claims, and liability for injuries are defined in national law. In most Member States, there are provisions in national law which define this liability, but in some (for example the Czech Republic and France) we have not been able to identify any specific provisions in national law. Potential liability, and therefore also insurance requirements, will also vary depending on the income level of the State concerned.
- E1.4 Appendix Table E.1 summarises national legislation relating to insurance requirements and liability.

APPENDIX TABLE E.1 INSURANCE AND LIABILITY PROVISIONS IN NATIONAL LAW

State	Insurance	Liability
Austria	<ul style="list-style-type: none"> ■ Articles 15 and 15 (b) of the Railway Act (EisBG) requires railway undertakings operating in Austria to have a licence ■ As a condition of this license required to have insurance covering €10 million per incident and at least 2 incidents per year 	<ul style="list-style-type: none"> ■ Austrian law regulating civil liability for road and railway accidents (EKHG) limits liability for death/injury to €1,920,000 or a €120,000 annual annuity per passenger ■ Maximum liability for damage to property €1,200,000 ■ Conditions of Carriage define liability for baggage
Belgium	<ul style="list-style-type: none"> ■ Ministerial Decree of 28 July 2005 defines minimum insurance requirement - €70 million for third party liability 	<ul style="list-style-type: none"> ■ Article 29 of Law of 21 January 1989 ■ Defines automatic compensation for victims of rail accidents

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State	Insurance	Liability
Czech Republic	<ul style="list-style-type: none"> Requirement for insurance defined in network statement but no specific provisions in national law 	<ul style="list-style-type: none"> No specific provisions in national law
Denmark	<ul style="list-style-type: none"> Danish Railway Act (1249/2010) defines strict liability and that railway undertakings must have sufficient insurance to cover this. 	<ul style="list-style-type: none"> Danish Railway Act (1249/2010) defines liability, including for consequential damage from delay No limits to liability defined
Finland	<ul style="list-style-type: none"> Confidential 	<ul style="list-style-type: none"> Rail Liability Act 1999 (Law 113/1999) defines strict and unlimited liability for damage caused by a rail vehicle, and personal injury
France	<ul style="list-style-type: none"> None defined in national law 	<ul style="list-style-type: none"> None defined in national law
Germany	<ul style="list-style-type: none"> German Regulation on the liability insurance of Railways (EBHaftPflV) requires insurance to cover €10 million per incident and at least 2 incidents per year 	<ul style="list-style-type: none"> German law of liability (HPfIG) limits liability for death/injury to €600,000 or a €36,000 annual annuity per passenger No national laws on liability for delay or damage to property - covered by Conditions of Carriage
Hungary	<ul style="list-style-type: none"> Government Decree 271/2007 defines insurance requirements for railway undertakings, based on passenger volumes 	<ul style="list-style-type: none"> No information provided by NEB
Italy	<ul style="list-style-type: none"> Requirement defined in RFI network statement but not in national law 	<ul style="list-style-type: none"> No national laws
Lithuania	<ul style="list-style-type: none"> No national laws Law under consideration which would define LTL 2 million (€500,000) minimum insurance limit 	<ul style="list-style-type: none"> No national laws
Netherlands	<ul style="list-style-type: none"> No national laws. However, also regulated by concession contracts. 	<ul style="list-style-type: none"> No national laws. However, also regulated by concession contracts: maximum liability €137,000 for death/injury and €1,000 for baggage
Poland	<ul style="list-style-type: none"> Article 46 and 47 of the Railway Transport Law defines that railway undertakings must have insurance sufficient to cover their liabilities under the Regulation 	<ul style="list-style-type: none"> Article 64 of Transport Law 1984, as amended, defines that the railway undertaking is liable for delay and registered luggage (if at fault) Civil Code defines that operator liable for loss or damage to luggage, but only where at fault
Portugal	<ul style="list-style-type: none"> Decree Law 231/2007 defines that operators must have insurance of at least €10 million as a condition of obtaining a license 	<ul style="list-style-type: none"> Decree Law 58/2008 specifies that railway undertakings are liable for damage caused to passengers Defines liability limits for damage to baggage, bicycles, and for delays and

State	Insurance	Liability
		cancellations
Romania	<ul style="list-style-type: none"> ■ Order of the Ministry of Transport 535/26 of 2007, Annex 1 (licensing rules), states that railway undertakings must have liability insurance or arrangements to cover their liabilities ■ Recital 2.002(4) of Chapter III of the Civil Code, requires that carriers have civil liability insurance 	<ul style="list-style-type: none"> ■ Articles 22-28 of Government Decree number 7/2005 define liability . Maximum liability €75,000 for death and injury.
Spain	<ul style="list-style-type: none"> ■ Article 45(1)(d) of Law 39/2003 requires operators to have adequate insurance to cover civil liabilities, as a condition of obtaining a license. ■ Article 63 of Royal Decree 2387/2004 defines the minimum levels of this insurance (€450,000 per claim for death and injury to passengers). 	<ul style="list-style-type: none"> ■ Article 88(2) of Royal Decree 2387/2004 defines that the operator is liable for delay, cancellations, interruption of the journey, and loss or damage to checked baggage, except in cases of force majeure. ■ No limit to liability except for damage and delays/cancellations
Sweden	<ul style="list-style-type: none"> ■ Swedish Railways Act 2004 defines that railway undertakings must have insurance to cover their liabilities, but does not define what these liabilities are or the amount of the insurance 	<ul style="list-style-type: none"> ■ Swedish Rail Carriage Act (1985) provides for compensation for passengers for directly incurred costs, but this does not extend to compensation for delay ■ Otherwise liability not defined
United Kingdom	<ul style="list-style-type: none"> ■ Criteria and procedures for granting licences and licence exemptions (January 2011) states a minimum insurance value of £155 million (approximately €190 million) 	<ul style="list-style-type: none"> ■ None defined

Insurance provisions of railway undertakings

- E1.5 We have assessed the levels of insurance of the operators where we were provided with information on the actual level (some explained that this was commercially sensitive information). Where this information was not provided we have included the minimum requirement in national law as set out either in the network statement, or in the relevant national legislation that implemented Directive 2001/13/EC (setting out the licencing requirements).
- E1.6 In addition to the information we received in the interviews, we have also received further information that has been submitted to the Commission as part of a separate exercise, and where this information is different from what we have received through the interviews, we have noted this.
- E1.7 All of the operators reviewed for this study had either contracted insurance, or had made alternative provisions, and as a result appear to be compliant with the requirement in the Regulation to have insurance. However, we found there was significant variation in the amount of insurance that railway undertakings have. In one large Member State the main railway undertaking had insurance for €500

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million per claim whereas in another the railway undertaking only had insurance for approximately €10 million per claim. In two Member States we found that the level of insurance was clearly not sufficient:

- One main national railway undertaking had no insurance policy; it had made alternative arrangements in the form of a bank account where a sum of approximately €100,000 was held. (This is also not compliant in relation to Directive 2001/13/EC).
- Another had insurance for only €260,000 per incident.

E1.8 However, although Article 12 does require that operators are adequately insured for cover of their liabilities, it does not specify a minimum level. As this requirement is not very specific, a railway undertaking cannot necessarily be considered non-compliant as a result of a low level of coverage. Nonetheless, it is difficult to see how a provision of €100,000 or €260,000 could be considered as adequate coverage, as compensation for injuries to even a small number of passengers would be likely to exceed these limits (even if, as in one of these Member States, the maximum amount of compensation for a single individual is limited to €75,000). Therefore, for the purposes of this analysis, we have considered this to be non-compliant with the Regulation. Other railway undertakings might also be considered to be non-compliant depending on how ‘adequate’ is defined, but this is much less clear; we discuss in more detail below what an adequate level of insurance could be.

E1.9 A previous study undertaken on behalf of the Commission⁴¹ on Insurance of Railway Undertakings also found that insurance cover varies extensively across different operators. It also found that, excluding the extreme case, the coverage ranges from less than €10 million to €500 million. The report found that these significant inconsistencies in insurance requirements arose from the different interpretations of Directive 95/18/EC. The report also identified that in some Member States the level of coverage required is determined by the licensing authority on a case by case basis, which may raise issues of transparency and non-discrimination.

Definition of ‘adequate’ insurance

E1.10 As noted above, the Regulation requires ‘adequate’ coverage but does not define what this is. As a result, there are significant differences in the level of coverage and the arrangements adopted across the EU to cover liability.

E1.11 It would be better if the Regulation defined a minimum level of coverage. The key advantages of doing this would be:

- this would ensure that railway undertakings made sufficient provisions, and therefore that passengers were protected; and
- common provisions on insurance would reduce the cost and administrative burden of obtaining insurance for cross-border services, and therefore facilitate the operation of these cross-border services (this was also identified as an issue by the 2006 study referenced above).

⁴¹ European Commission, DG TREN (2006) *Insurance of Railway Undertakings. Final report.*

- E1.12 Definition of minimum requirements on insurance would also be more consistent with Regulation 785/2004 in the air sector, which specifies minimum levels of insurance which air carriers operating to, from and through the EU must have to cover their liabilities to passengers and third parties.
- E1.13 However, the amount of insurance required depends on the amount of liability that a railway undertaking has. Therefore, a prerequisite for the definition of common levels of insurance would be the definition of common levels of liability; in the air transport sector this is determined by the Montreal Convention, which is implemented into EU law by Regulation 889/2002. As discussed above, although Regulation 1371/2007 defines some common provisions on liability (for example minimum levels which apply in all States), it does not fully define railway undertakings' liabilities. If liability was not harmonised, EU legislation could still define minimum levels of insurance and criteria to be followed in evaluating whether higher insurance levels were needed for specific States.
- E1.14 There are two ways in which adequate insurance could be defined:
- **An amount per incident:** Insurance is often defined in terms of a maximum amount per incident, and as shown above, many railway undertakings have insurance contracted on this basis. If this was the approach adopted, the amount required per incident could be estimated based on the sum of the potential liabilities to each passenger (so the liability per passenger multiplied by the number of people who might be involved in an incident). A detailed risk assessment would need to be undertaken in order to inform this assessment, but as an indicative example, we have used the most serious rail accident we can identify in recent times in the EU, the Eschede disaster in Germany in 1998, where approximately 200 people were killed or seriously injured. If, in the Member State concerned, the liability per person was at the minimum level allowed by the Regulation (175,000 units of account), and the insurance needed to cover a liability of this amount to potentially 200 passengers, this implies that the insurance per incident should be at least 35 million units of account.
 - **An amount per person:** The approach in the air transport sector is to define an amount per passenger, rather than per incident (there is also a requirement for insurance for liability to third parties, but this is less of an issue in the rail sector). Air carriers are required by Regulation 785/2004 to have insurance for liability to passengers of at least 250,000 SDR (Special Drawing Rights) per passenger. Although liability to passengers is defined in the Montreal Convention and Regulation 889/2002 as being unlimited, insurance amounts must usually be limited and airlines can contest claims above 113,100 SDR on the basis that they were not negligent or otherwise at fault.
- E1.15 Defining an amount per passenger has the advantage that it avoids policymakers needing to make theoretical judgements about the number of people that could be involved in an incident and therefore the maximum theoretical liability which has to be covered by insurance. If the amount is defined per passenger, insurers would still have to do this, but they are specialist in making these assessments.
- E1.16 In addition, we note that in the event of a serious accident which leads to substantial payouts, adequate coverage becomes fundamental, in order to ensure that the railway undertaking can meet the liabilities.

Final Report

Conclusions

- E1.17 The Regulation defines minimum liability levels for accidents, however it does not set out the circumstances in which railway undertakings are liable. In many States (but not all), national law defines these circumstances, and may also define minimum levels of insurance.
- E1.18 The Regulation requires that railway undertakings have ‘adequate’ insurance coverage or make alternative arrangements, but does not define what ‘adequate’ means. While most railway undertakings reviewed for the study appear to have adequate levels of insurance to cover their liabilities, this depends on how adequate is defined, and in our view railway undertakings in two of the Member States cannot be considered to have made sufficient provision.
- E1.19 In order to protect passengers and to reduce the cost and administrative burden of operation of cross-border services, it would be better if the Regulation defined what adequate insurance was. However, as the amount of insurance required depends on the liability that railway undertakings have, a prerequisite for the definition of common levels of insurance would be the definition of common levels of liability. Minimum insurance levels could either be defined in terms of an amount per incident or an amount per passenger. If liability was not fully harmonised, the Regulation could still specify minimum amounts of insurance but Member States would need to be able to specify higher levels if this was necessary as a result of their national provisions on liability.
- E1.20 It should be noted that, following the accident at Viareggio in 2009, FS and some of the larger operators across Europe have been pushing for a precise figure to be set as the minimum level of insurance to ensure that all operators have sufficient coverage to cover any serious accident. It should be noted however that introducing a minimum value may create entry barriers for smaller operators unless it is proportionate to the size of the operators.

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