

Annex V - Description of Regulation 1371/2007 on rail passengers' rights and obligations

Regulation 1371/2007¹ has been adopted in addition to the CIV Uniform Rules under the COTIF, in order to guarantee an extended scope for passengers' rights.² Indeed, Regulation 1371/2007 also applies to domestic railway services (subject to the possible exception as described below) whereas CIV only applies to international traffic.

Similarly to the CIV Uniform Rules under the COTIF, the Regulation imposes to the RUs a strict (objective) liability towards their passengers, even where damage has been caused by a third party, such as the IM.

The liability issues in this Regulation are purely limited to the relationships between RUs and their passengers in the operation of passenger services.

Comparing to the CIV, first, Regulation 1371/2007 provides more detailed provisions relating the RU's liability in the event of delays, cancellation or missed connections and second, Regulation 1371/2007 foresees general rules on enforcement whereas CIV merely addresses the right of recourse against other carriers (Articles 61 and subs.)

Scope

Regulation 1371/2007 is of direct application in EU Member States to all rail journeys and services throughout the EU provided by one or more licensed railway (Article 2(1)). However, domestic rail services may be excluded for three periods of maximum 5 years (Article 2(4)). Urban, suburban and regional rail passenger services may also be excluded (Article 2(5)). A further exemption may be granted for particular services or journeys because a significant part of the services is operated outside the EU (Article 2(6)).

Since the rail passenger is the weaker party to the transport contract, according to recital 3 of Regulation 1371/2007, obligations towards him pursuant to the Regulation may not be limited or waived (Article 6(1)). Only a more favourable regime is accepted (Article 6(2)).

¹ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations

² See recital 6 of Regulation 1371/2007.

Enforcement

Member States designate a body or bodies responsible for the enforcement of Regulation 1371/2007 (Article 30). Penalties are also to be set out by Member States to sanction infringements of the Regulation (Article 32).

Liability

The liability regime of RUs for passengers and their luggage refers to the CIV Uniform Rules which are annexed to the Regulation.

Articles 26 of the CIV stipulate the principle of strict (objective) liability where the origin of a given damage lies in an accident arising out of the operation of the railway and happening while the passenger is in, entering or alighting from railway vehicles whatever the railway infrastructure used.

The RU which is assumed to be liable on the basis of the strict liability principle can be relieved from its liability on several grounds (Article 26 (2)):

- if the accident has been caused by circumstances not connected with the operation of the railway despite having taken the care required;
- to the extent that the accident is due to the fault of the passenger,
- if the accident is due to the behaviour of a third party, which the carrier, in spite of having taken the care required, could not avoid.

The RU will similarly be liable when, because of exceptional circumstances, the operation of the railway is temporarily suspended and the passengers are carried by another mode of transport (Article 31). The RU is also liable for his servants and other persons implied in the provision of the transport service, including the IM (Article 51 CIV). Under Article 51 of the CIV, the RUs have a possible right of recourse against it if so provided under national laws.

The damage can be either physical or mental, including a shock (see explanatory report on the CIV Uniform Rules, p. 16). The damage in case of death will comprise any necessary costs following the death (e.g. transport and funerals) or if death does not occur at once, the same damage as provided in case of personal injury (Article 27 CIV). In case of personal injury, the damage will comprise any necessary costs (e.g. treatment and transport) as well as compensation for financial loss, due to total or partial incapacity to work, or to increased needs (Article 28 CIV). Other bodily harm (e.g. moral injury, in particular *pretium doloris*, according to the explanatory report on CIV, p. 18) might also be

considered under national law. The loss or damage resulting from total or partial loss of, or damage to objects that the passenger had on him or with him (i.e. luggage) as well as animals are also comprised in case of death or personal injury (Article 33(1) CIV). In other cases, the basis for liability is the fault (Article 33(2) CIV).

The damages in case of death or personal injury are awarded in the form of a lump sum (Article 30 CIV) and cannot be lower than 175.000 units of accounts.³ The damages in case of loss of or damage to articles is limited to 1400 units of accounts per passenger (Article 34 CIV).⁴ Limits of liability are however excluded when the loss or damage results from an act or omission committed either with the intent to cause such loss or damage or recklessly and with knowledge that such loss or damage would probably result (Article 48 CIV).

Article 52 deals with possible competing actions (identified in the explanatory report on CIV, p. 24 as being extra-contractual). These actions are subject to the conditions and limitations drawn in the CIV.

Chapter IV of the Regulation deals with delays, cancellations and missed connections. This chapter refers to Title IV, Chapter II of CIV. Under title IV, Chapter II of CIV, the RUs bear a strict (objective) liability for delays, missed connections and cancellations towards their passengers. The RUs are however relieved on the common grounds under the Uniform Rules (if the delay or cancellation has been caused by circumstances not connected with the operation of the railway despite having taken the care required; to the extent that the delay or cancellation is due to the fault of the passenger; if the delay or cancellation is due to the behaviour of a third party - another RU is not considered as a third party -, which the carrier, in spite of having taken the care required, could not avoid). Chapter IV of Regulation 1371/2007 further provides for the reimbursement of the full cost of the ticket or re-routing of the passenger in the event of a delay of at least 60 minutes. If the ticket has not been reimbursed, the passenger has the right to request a compensation without losing his right of transport. The compensation amounts to 25% of the price of the ticket (or half of the price if it is a return) in the event of a delay of 60 to 119 minutes and 50% of the price of the ticket (or half the price if it is a return) when the delay exceeds 119 minutes. The passengers have a right for assistance as soon as a train has 60 minutes of delay. These provisions apply whatever is the cause of the delay or the cancellation. Hence, delays or cancellations caused by an accident are not excluded.

³ As of 15 March 2010, 1 SDR = 1,118740 € Hence, 175.000 SDR = 195.779,5 €

⁴ As of 15 March 2010, 1 SDR = 1,118740 € Hence, 1400 SDR = 1566,24 €