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AK Position Paper

# Regulation on Rail Passengers' Rights and Obligations

COM (2017) 548

## About us

**The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske  
President

Christoph Klein  
Director

## The AK's position in detail

With this draft, the European Commission intends to eliminate ambiguity and provide clarification regarding some of the provisions of Regulation (EC) No 1371/2007. For instance, cases of "force majeure", in which no liability is assumed for delays, are defined more clearly. Furthermore, the new version contains more detailed provisions on accessibility. Whereas the Federal Chamber of Labour (BAK) welcomes the noticeable trend towards stronger rights of rail passengers, it takes a highly critical view of some of the provisions.

In general, BAK holds the view that the rights of passengers of all modes of transport should be harmonized at the highest possible level, because differences in the strength of passenger rights lead to a distortion of competition among the different modes of transport. Therefore, BAK urgently calls upon the European Commission to finally ensure an equal level of protection for all passengers regardless of the mode of transport used.

### **Recital 15:**

The draft specifies that persons with disabilities have to be provided with assistance at all times during operating hours, but fails to address the issue of how this is to be accomplished at the numerous unstaffed stations.

### **Article 2 (2) (a):**

Leaving aside the fact that, from a consumer policy perspective, the aim should be to have no exemptions from the scope of application at all, or merely a few, BAK welcomes the fact that even

though, pursuant to Article 2(2)(b) in conjunction with Recital 7, exemptions for international passenger rail services may be granted for an unlimited period of time. This is only possible if an adequate level of passenger rights is ensured on the part of such services provided on the respective Member State's territory. It is, however, incomprehensible why different exemptions should apply when it comes to compensation for delays, depending on whether the local passenger services are domestic or of a cross-border nature. In principle, BAK sees no necessity for a provision allowing the exemption of regional rail passenger services from the Regulation's scope of application.

### **Article 3 (8):**

It has been proposed that the word "single" be inserted into the definition of the term "through ticket", so that a single transport contract would be required for a through ticket. BAK recommends replacing the term "single" with the term "uniform". As soon as there is any indication of a through journey e.g. if reservations for successive railway services are made, it should always be assumed that the journey is a through journey.

### **Article 3 (10):**

Here, the passage "under a single transport contract" should also be replaced with the words "under a uniform transport contract" in order to clarify that two separate contracts may also constitute a uniform transport contract.

**Article 6:**

Recital 6 merely mentions that the carriage of bicycles on board trains should be allowed, whereas pursuant to Article 6, passengers are entitled to take bicycles on board the train. BAK welcomes the intention to promote the carriage of bicycles on board trains, but at the same time points out that, in crowded trains, a legal entitlement to take bicycles on board could cause inconvenience to other passengers. This could result in user conflicts between passengers with and without bicycles. BAK believes that the transport of passengers should take priority and the entitlement to take bicycles on board should therefore only apply if no other passengers will be inconvenienced thereby.

Moreover, the proposal allows railway undertakings to charge a “reasonable fee” (*zumutbares Entgelt*) for the on-board carriage of bicycles in the German version of the proposal. The German term *angemessen* would be more appropriate than the term *zumutbar* as the latter may – depending on the individual case – also refer to a higher fee which is no longer reasonable. According to the proposal, an additional passage is to be inserted into Article 6 stating that passengers are to keep their bicycles under supervision during the journey and ensure that no inconvenience or damage is caused to other passengers, mobility equipment, luggage or rail operations. From a consumer policy perspective, this obligation is worded too broadly and there are many practical cases in which it will not be enforceable. Once a passenger has handed over his or her bicycle to the railway undertaking for transport, the railway undertaking is obliged under the transport contract to properly store and, if necessary, supervise the bicycle. For this reason, the new second

sentence of Article 6 should, in the view taken by BAK, be deleted without substitution. Rather, this should be regulated by the respective transport contract.

In addition, BAK suggests that if a rail replacement service has been planned in advance for a train allowing the carriage of bicycles, it should also be possible to transport bicycles on the rail replacement buses used.

**Article 10 (2) and (4):**

According to the Regulation, the transport undertaking has to distribute tickets (to passengers) via at least one of the following points of sale:

- ticket offices or ticketing machines
- telephone, the Internet or the like
- on board trains

BAK is of the opinion that at least two of these distribution channels should be available. If there is no point of sale at the departure station, it has to be possible to buy the tickets on board a train without extra charges. In general, no difference should be made between cashless payments and cash payments.

**Article 10 (6):**

Under this provision, when a passenger receives separate tickets for a single journey comprising successive railway services, his or her rights to information, assistance, care and compensation are to be equivalent to those under a through ticket and cover the whole journey from the departure to the final destination, unless the passenger is explicitly informed otherwise in writing. In the interest of consumer protection, this option to create an exemption from these obligations simply by providing written information should be deleted without substitution. There is a high probability that railway undertakings would use

this option all too often, resulting in a considerable limitation of passenger rights. Moreover, cases of separate tickets for a single journey comprising successive railway services should always be regarded as through journeys and the passengers should be granted the respective rights. The passage “unless the passenger is explicitly informed otherwise in writing” in the first sentence of Article 10 (6) as well as the second and third sentences of Article 10 (6) should therefore be deleted without substitution.

**Article 16:**

It is proposed that a passage be inserted in Article 16 (1) stating that the prerequisite for a claim for reimbursement of the cost of the ticket or continuation of the journey is that “either at departure or in the event of a missed connection in the course of a journey with a through ticket”, it is reasonably to be expected that arrival at the final destination under the transport contract will be subject to a delay of more than 60 minutes. In order to cover all possible scenarios in which a delay is to be expected, the wording should be changed as follows: “either before or at departure or in the event of a missed connection in the course of a journey with a through ticket”. A delay might already be foreseeable prior to the train’s departure and in such case the consumers should be given the chance, from the very moment in which the delay is foreseeable, to exercise their right to choose between the options listed in Article 16 (1). From a consumer policy perspective, the proposed provision of Article 16 (2) is highly welcome, as in practice rerouting that is unacceptable, for instance because the travel time would be too long, should not make it difficult for consumers to exercise their right of choice.

If an excessive delay is already foreseeable before the train’s departure and/or in the event of a missed connection, persons holding tickets are still entitled to claim reimbursement of the costs for the ticket if they do not embark on the journey. As an alternative, they may also choose to travel anyway or to continue their journey, if necessary using rerouted transport options. This rule now expressly also applies to through tickets, i.e. tickets including at least one change of trains. It should be specified that the rights of compensation under the Regulation apply to the entire travel chain for which the through ticket has been issued, irrespective of whether this also includes urban or regional services. If the passenger chooses to continue the journey pursuant to paragraph (1)(b) or (c), it should be made clear that the passenger will by all means be entitled to compensation of the ticket price pursuant to Article 17 in the event that arrival is delayed.

**Article 17 (1):**

The correction in Article 17 (1) from “on the ticket” to “in the transport contract” is also appreciated from a consumer policy perspective, as this means that now the total delay on the booked route(s) is taken into account rather than only the (partial) route indicated on the individual ticket.

**Article 17 (2):**

Article 17 (2) first mentions delays or cancellations and then continues by referring to delays only. There is a risk that in the event of a foreseeable delay, the railway undertaking might decide to cancel the respective train in order to embellish the statistics on delays and/or to avoid compensation payments.

The added passage in Article 17 (2), stating that where delays of less than 60 minutes occur repeatedly during the period of validity of the travel pass or season ticket, the delays are to be counted cumulatively, is a welcome change from a consumer policy perspective, as part of the ticket price should be reimbursed in any case, even if the individual delays are shorter than one hour.

**Article 17 (8):**

Although it is beneficial that cases of “force majeure” are defined more clearly, it is incomprehensible why this risk should be borne entirely by the passengers. Article 17 (8) refers to specific cases of “force majeure” in which the railway undertaking is not obliged to pay compensation. In the interest of consumer protection, these exemptions releasing the undertaking from the obligation to pay compensation provided for in Article 17 (8), which is measured exclusively on the basis of the ticket price, should be deleted without substitution. In the event that circumstances of force majeure cause a delay, the consumers should be reimbursed for at least part of the ticket price. There is no objective explanation why railway undertakings should be entitled to retain the full ticket price in case of delays caused by force majeure. Should it be impossible to delete the new Article 17 (8) without substitution, at least the “severe weather conditions” mentioned in paragraph (8) and in Recital 21 should be deleted without substitution. Bad weather alone cannot be considered an extraordinary circumstance. Pursuant to Article 17 (8), even if extraordinary circumstances exist, it also has to be examined whether the railway undertaking has taken all reasonable measures to prevent the severe weather conditions or major natural disasters.

Needless to say, the railway undertaking cannot try to prevent the disasters themselves by taking all reasonable measures, but only their consequences (= delays). Under the new Article 18 (2) (a), if meals and refreshments are offered, certain criteria have to be taken into account, such as the distance from the supplier, the time required for delivery and the cost. However, the cost should not be a determining factor. Whenever there is a delay, railway undertakings should offer meals and refreshments to the passengers. The passage “and the cost” in Article 18 (2) (a) should therefore be deleted without substitution.

**Article 22 (2) and Article 23 (3):**

The wording chosen here, according to which railway undertakings only have to make an effort to organize assistance, is very vague and leads to legal uncertainty.

**Article 26:**

Staff training should not be limited to disability awareness training, but also include the issues of violence and de-escalation, passenger rights and up-to-date complaint management.

**Article 28 (1):**

Even though, pursuant to this new provision, not only railway undertakings but also ticket vendors, station managers and infrastructure managers have to set up a complaint-handling mechanism, this obligation only applies to station managers and infrastructure managers of large railway stations, i.e. stations handling at least 10,000 passengers per day on average in the course of a year. However, in the interest of consumer protection, managers of less frequented stations and infrastructures should also have a complaint-handling process in place. Therefore, the passage stating that a certain number of passengers are required should be deleted.

**Article 28 (2), 2<sup>nd</sup> sentence:**

Complaints are to be submitted within six months of the incident that is the subject of the complaint. BAK takes the view that this sentence should be amended to ensure that claims under this Regulation may be asserted within the national periods of limitation if such periods are longer than the aforementioned period of six months.

**Article 30:**

Information to passengers about their rights must, in the view of BAK, be available and/or on display at every station and on board every train in a clearly visible and accessible manner. If a train is delayed by more than one hour, the passengers have to be informed about their rights regarding compensation payments. This may be done via easy-to-understand announcements or by distributing relevant forms.

**Article 32:**

Article 32 provides for a rough definition of new tasks for national enforcement bodies. From a consumer policy perspective, the stipulation of certain minimum powers of the national enforcement bodies (e.g. imposing sanctions and/or reviewing general terms and conditions) would be appreciated for the sake of clarity and would allow for the definition of uniform EU-wide (minimum) competences.

**Article 33 (6):**

Pursuant to Article 33 (6), within the framework of cooperation between national enforcement bodies, national enforcement bodies may derogate from the provisions of this Regulation where, for justified reasons, in particular language or residence, this is in the passenger's interest. From the point of view of consumers, this is a welcome provision, because experience has shown that if a foreign-language enforcement body is in charge, this may constitute an obstacle to consumers asserting their claims and therefore consumers prefer a national enforcement body in their state of residence.

Should you have any further questions  
please do not hesitate to contact

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