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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Report on the application of Regulation (EU) No 1177/2010 concerning the rights of
passengers when travelling by sea and inland waterway and amending Regulation (EC)
No 2006/2004**

1. INTRODUCTION

1.1. Background

Regulation (EU) No 1177/2010¹ ('the Regulation'), which aims to ensure the basic protection of passengers who travel by sea and inland waterway using passenger services or cruises, became applicable on 18 December 2012.

The Commission is submitting this report under Article 29 of the Regulation, which requires it to report to the European Parliament and the Council on the operation and effects of the Regulation and, if necessary, to make legislative proposals for implementing it in more detail or amending it.

The report is based partly on quantitative and qualitative input from national authorities' reports on the enforcement of the Regulation² in 2013-2014 and consultation of stakeholders representing passengers and the industry at European level.³

1.2. Importance and features of the EU maritime and inland waterways passenger transport sectors

Sea traffic accounts for almost all passenger transport market by boat in the EU. Inland waterway traffic accounts for less than 1 % of the market.⁴

The Regulation distinguishes between commercial passenger and cruise services and reflects their different characteristics in the different scope of the rights that it grants to passengers:

- *Commercial passenger services* are passenger transport services operated between ports according to a published schedule. They constitute 96.5 % of the maritime passenger market: 193 million passengers used maritime ferries and other regular maritime liner services in 2013.⁵ Intensive maritime passenger traffic is essential if Member States' archipelagos, islands and outlying/outmost regions are to form part of the EU's social and economic fabric. In some cases (e.g. small islands without an air transport connection), there is no alternative to maritime transport and citizens have to travel by ship, under whatever conditions the carrier may impose.

¹ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).

² Article 26 of the Regulation obliges the national authorities designated by the Member States to publish a report by 1 June 2015 and every two years thereafter on their enforcement activities in the previous two calendar years. The reports are available on the authorities' homepages.

³ The Commission invited organisations representing passengers (including those with disabilities), ship-owners, ports and cruise operators at EU level to send observations on the operation of the Regulation in writing and to participate at a stakeholders' meeting in Brussels on 14 December 2015. The following organisations did so: the Cruise Lines International Association — Europe (CLIA Europe), European Community Shipowners' Associations (ECSA), the European Disability Forum (EDF), the European Passengers' Federation (EPF) and the European Sea Ports Organisation (ESPO).

⁴ See p. 15 of the impact assessment on the proposal for the Waterborne Passengers' Rights Regulation (SEC(2008) 2950).

⁵ *EU transport in figures*, statistical pocketbook, European Commission, 2015.

- *Cruises* are waterborne services operated exclusively for pleasure or recreation, supplemented by accommodation and other facilities, with more than two nights on board. In 2013, the number of cruise passengers reached almost 7 million, i.e. around 3.5 % of the market.⁶ The cruise industry is part of the luxury segment of the maritime sector; the ships include a complete hotel infrastructure, provide leisure activities and often bring passengers back to the port of departure.

2. THE AIMS, SCOPE AND CONTENT OF THE REGULATION

2.1 Aims of the Regulation

The EU legislators have adopted rules on passenger rights for all modes of transport (aviation, rail, waterborne and bus/coach transport) in order to give citizens minimum protection when they travel around Europe and thus facilitate mobility and social integration. The existence of a common set of passenger rights guaranteed by law across the four modes (with specific provisions reflecting modal characteristics of each mode, markets and passengers⁷) helps to create a level playing-field for operators within and across modes.

2.2 Scope and content of the Regulation

Scope

With certain exceptions,⁸ the Regulation applies to maritime and inland waterway passenger services operated from or to ports in the EU and to cruise services with a port of embarkation in the EU.

Until 18 December 2014, Member States were allowed to exempt from the application of the Regulation seagoing ships of less than 300 gross tonnes used in domestic transport, provided that the rights of passengers were adequately ensured under national law. None of the Member States have made use of this exemption.

Member States may decide not to apply the Regulation to passenger services covered by public service obligations, public service contracts or integrated services if they guarantee that the rights under the Regulation are comparably guaranteed by national law. None of the Member States made use of this exemption.

Content

⁶ *Ibid.*

⁷ One characteristic of waterborne passenger transport, as compared with other modes of collective transport, is that the overwhelming majority of passengers travel in ro-ro ferries with their in groups with their cars or as part of their coach trip.

⁸ The Regulation does not cover:

- ships certified to carry up to 12 passengers;
- ships with a crew responsible for the operation of the ship composed of not more than three persons;
- passenger services over a distance of under 500 m one way;
- excursion and sightseeing tours other than cruises;
- ships not propelled by mechanical means; and
- original and individual replicas of historical passenger ships designed before 1965, built predominantly with original materials and certified to carry up to 36 passengers.

Like passenger rights applicable to other modes of transport, waterborne passenger rights are based on four principles:

a) *Non-discrimination on the grounds of nationality*

No passenger should suffer direct or indirect discrimination on the basis of nationality when purchasing tickets for waterborne passenger transport services and cruises.

b) *Accurate, timely and accessible information*

Passengers have the right to adequate information before and during their journey (in particular in the event of transport disruption), including on their rights and the contact details of national enforcement bodies (NEBs).

c) *Immediate and proportionate assistance in the event of transport disruption*

In the event of a delay of more than 90 minutes or cancellation of a passenger service or cruise, passengers are entitled to proportionate and suitable assistance free of charge. This could include snacks, meals, refreshments and, in some circumstances, accommodation. They must also be offered the choice between:

- re-routing to the final destination at no additional cost, at the earliest opportunity and under comparable conditions; and
- reimbursement of the ticket price, combined, where relevant, with a free-of-charge return service at the earliest opportunity to the first point of departure as set out in the transport contract.

Also, passengers have a right to objective and standardised compensation in the event of a long delay at arrival. The amount of compensation depends on the extent of the delay and the scheduled duration of the journey, and is calculated in relation to the ticket price. The carrier does not have to pay compensation if it proves that the delay was caused by weather conditions endangering the safe operation of the ship or from extraordinary circumstances that could not reasonably have been avoided.

Contrary to commercial passenger services, cruises do not have a binding published schedule, therefore cruise passengers have no right under the Regulation to choose between re-routing and reimbursement in the event of cancelled or delayed departure (this issue shall be regulated in the contract that the passenger concludes for the cruise services), neither a right to compensation in the event of delayed arrival.

d) *Rights of persons with disability and reduced mobility*

The Regulation imposes certain obligations on carriers, port terminal operators, travel agents and tour operators in order to ensure that persons with disability or reduced mobility have equal opportunities for waterborne travel.

Carriers, travel agents and tour operators may not refuse to accept a reservation by passengers, or to transport them, on the grounds of their disability or reduced mobility, unless:

- it is impossible to transport them in compliance with the applicable safety legislation and the health and safety requirements established by the competent authorities; or
- the design of the ship or the transport infrastructure make it impossible to transport them in a safe and operationally feasible manner.

Carriers and terminal managers must put in place non-discriminatory access conditions.

Persons with disabilities or reduced mobility must not be asked to pay any additional fee for their tickets, and carriers and port terminal operators must provide them, free of charge, with appropriate assistance in ports and on board ships.

Other EU legislation relevant for waterborne passenger services

Passengers using maritime services within the scope of the Regulation are also protected by Regulation (EC) No 392/2009,⁹ which aims to ensure that adequate compensation is paid for any personal injury (including death) or other loss or damage they might suffer as a result of a maritime accident.¹⁰

Passengers who travel by ship as part of a package trip enjoy additional rights under the recently adopted Directive (EU) No 2015/2302 on package travel and linked travel arrangements.¹¹

The following EU legislation also regulates several aspects of the accessibility of persons with disability or reduced mobility to ships: Directive 2009/45/EC on safety rules and standards for passenger ships¹², Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services¹³ and Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community.¹⁴

A significant part of the waterborne passenger transport occurs in a cross-border context: either passengers travel on cross-border services or they travel on domestic services outside of their own Member State. In order to protect the interest of such passengers, Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws¹⁵ provides an appropriate framework for national enforcement bodies to cooperate with each other and to defend the collective interest of passengers in a cross-border context.

3. MEMBER STATES' APPLICATION OF THE REGULATION

The Regulation requires Member States to designate national enforcement bodies (NEBs) to enforce it and to lay down effective, proportionate and dissuasive penalties in their national law to sanction operators that breach it.

⁹ Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 28.5.2009, p. 24).

¹⁰ The scope of Regulation (EC) No 392/2009 is different from that of Regulation (EU) No 1177/2010 – it applies to maritime services not covered by the latter, but it does not apply to inland waterways services.

¹¹ Directive (EU) No 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements (OJ L 326, 11.12.2015, p. 1), which amended Regulation (EC) No 2006/2004 and Directive 2011/83/EU, and repealed Council Directive 90/314/EEC.

¹² OJ L 163, 25.6.2009, p. 1.

¹³ OJ L 138, 1.6.1999, p. 1.

¹⁴ OJ L 188, 2.7.1998, p. 35.

¹⁵ OJ L 364, 9.12.2004, p. 1.

The designation of NEBs¹⁶

Most, but not all, Member States have designated NEBs that were previously responsible for passenger rights in other transport modes. The NEBs are either transport authorities or consumer protection authorities. Some Member States designate several NEBs: generally a consumer protection authority which is responsible for complaint handling and a transport authority which is responsible for other issues (inspections, sanctions, access to ships and port terminals for passengers with disabilities). In most Member States NEBs have been designated at national level only, but in a few Member States regional authorities play a key role in enforcing the Regulation.

Complaint handling

Passengers may submit complaints about alleged infringements of the Regulation to the carrier, the port terminal operator or directly to the NEB.

The Regulation does not stipulate a chronological order for the lodging of a complaint, but it does allow Member States to require that passengers shall submit their complaint to the carrier or port terminal operator first, with the NEB only acting as an appeal body if the passenger is not satisfied with the answer. In total, 21 Member States chose this option, which has the advantage that NEBs can process complaints more efficiently and rapidly, since they have at their disposal from the beginning the correspondence between the complainant and the carrier/terminal operator, and thus a more comprehensive overview of the case from both parties' points of view.

There are no publicly available figures on the number of complaints that passengers submitted to carriers or terminal operators in 2013 and 2014. Although such data would be useful for assessing the operation of the Regulation, the carriers and terminal operators are not obliged to collect them and report them to the NEBs.

We do know, however, that the NEBs have handled very few complaints (see the table below). There are various reasons for this; in particular, the Regulation is relatively recent and many passengers might not be fully aware of their rights. Also, in most Member States, passengers must first submit their complaints to the carrier or terminal operator, who seem to settle most of them satisfactorily so that they do not reach the NEBs.

Sanctions

Most Member States' national laws provide for a penalty system based solely on fines, but some NEBs can also withdraw an operator's licence if it deliberately and systematically breaches the Regulation.

NEBs have imposed very few sanctions since the Regulation became applicable (see the table below). Most argue that operators are keen to comply and correct breaches and resolve complaints before it becomes necessary to impose a sanction.

¹⁶ For a list of NEBs responsible for enforcement of the Regulation, see:
http://ec.europa.eu/transport/themes/passengers/maritime/doc/2010_1177_national_enforcement_bodies.pdf

Table - The number of complaints handled and sanctions imposed by NEBs¹⁷

Member State	Number of complaints handled		Number of sanctions imposed	
	2013	2014	2013	2014
Austria	N/A	N/A	N/A	N/A
Belgium	N/A	N/A	N/A	N/A
Bulgaria	-	-	-	-
Croatia	0	0	0	0
Cyprus	-	-	-	-
Czech Republic	N/A	N/A	N/A	N/A
Denmark	1	2	0	0
Estonia	1	1	0	0
Finland	10	6	N/A	N/A
France	N/A	0	N/A	0
Germany	4	10	0	0
Greece	64	45	11	7
Hungary	0	0	0	0
Ireland	3	0	0	0
Italy	N/A	N/A	N/A	N/A
Latvia	0	0	0	0
Lithuania	0	0	0	0
Luxembourg	N/A	N/A	N/A	N/A
Malta	1	3	0	0
Netherlands	0	0	0	0
Poland	N/A	0	N/A	0
Portugal	N/A	0	N/A	0
Romania	N/A	0	N/A	0
Slovakia	0	0	0	0
Slovenia	0	0	0	0
Spain	501	419	21	39
Sweden	1	27	N/A	0
United Kingdom	14	11	0	0

Other enforcement and communication activities

Handling complaints and penalising non-compliance are just some examples that the Regulation gives of the possible tools to enforce waterborne passenger rights. Many NEBs have been very proactive and have taken additional action.

¹⁷ Figures taken from NEB activity reports. Where no figures are available (N/A), there was no operational NEB in that Member State in the year in question or there was no penalty system in place to sanction operators that breached the Regulation, or the NEB did not published its activity report .

Both NEBs and stakeholders have said that meetings between NEBs, carriers and port terminal operators¹⁸ and the publication of national guidelines on passengers' rights and operators' obligations¹⁹ before the Regulation became applicable were very useful in preparing operators for the application of the Regulation.

Some NEBs²⁰ participate frequently in media events and tourism fairs to inform the public about waterborne passenger rights.

Several NEBs carry out regular inspections to check whether ships and port terminals provide the necessary information for passengers and whether they are accessible for persons with disability or reduced mobility. They also check carriers' and terminal operators' homepages (e.g. to ensure that passengers are informed about their rights, or that general terms of contract are in line with the Regulation).²¹ The main aim is not to sanction operators, but to educate them about their obligations under the Regulation and facilitate voluntary compliance.

4. OPERATION OF THE REGULATION AND ACTION FOR IMPROVEMENT

4.1 Assessment of the operation of the Regulation

Results of stakeholder consultation

In November 2015, the Commission invited stakeholders representing passengers and the industry at EU level to share their views on the operation of the Regulation²².

Stakeholders representing ship-owners, cruise lines and ports indicated that the Regulation was working well and should not be amended. They stressed the high quality of service provided, as demonstrated by the very low number of complaints.

Passengers' organisations are generally satisfied with the Regulation, but see room for improvement. They think that carriers and port terminal operators have shown a positive approach to the implementation and application of the Regulation, but that work remains to be done by operators and NEBs. The level of application varies significantly between Member States and between carriers.

Further action should be taken to guarantee the right of mobility of people with disability and reduced mobility:

- vessels and terminals should be made more accessible;
- carrier and terminal staff should be better trained to provide appropriate assistance; and
- organisations representing disabled persons should be more systematically consulted on the implementation of the relevant provisions.

¹⁸ Such meetings took place in Denmark, Germany, Finland and the UK, for example.

¹⁹ The German, Irish and UK authorities stated in their reports that they published such guidelines.

²⁰ The Estonian, Swedish and Finnish NEBs reported on such activities.

²¹ The Czech, Danish, German, Estonian, Greek, Lithuanian, Finnish, Swedish and UK NEBs indicated that they inspect ships and terminals and monitor operators' homepages on a regular basis.

²² See footnote 3.

In particular, carriers and terminal operators should take account of the views of representative organisations when they establish quality standards for the assistance of persons with disability or reduced mobility (Article 13).

Assessment by the Commission

The Commission has not detected any deliberate, severe or systematic non-compliance with the Regulation. Most individual complaints of which it is aware relate to the lack of compensation or proper assistance in the event of delay or cancellation.²³ From the NEB reports, it seems that many such complaints fall outside the scope of the Regulation²⁴ or are unfounded.²⁵

Despite the overall positive picture, the Commission identified the following obstacles to more efficient application of the Regulation:

a) Passengers and operators are not sufficiently aware of their rights and obligations

As the Regulation is relatively recent, citizens are not sufficiently aware of it. NEBs and stakeholder representatives indicated that many operators were not aware of the Regulation when it was adopted and this is still a problem in certain Member States. Therefore there is a clear need for NEBs, national and EU-level stakeholder organisations, and the Commission to continue to educate passengers about their rights and operators about their obligations.

b) Enforcement is lagging behind in some Member States

Member States were late in taking measures to implement the Regulation. By 18 December 2012, when it became applicable, only two Member States had taken all the necessary national measures. The Commission launched infringement procedures against the Member States that had not notified it of the necessary measures. At the end of 2015, Belgium, Greece, Spain and Luxembourg still did not have fully operational NEBs or comprehensive systems of penalties for non-compliance with the Regulation.

NEBs' approaches to enforcing the Regulation vary widely. Some are very proactive in informing passengers about their rights and monitoring application, but the activity of several NEBs seems to be limited to complaint handling.

There are also significant differences as regards the actual enforcement of passenger rights. In some Member States, NEBs' decisions on complaints are not binding on the carriers and there is no alternative dispute resolution mechanism²⁶, so passengers have

²³ Europe Direct Contact Centre (EDCC) is a service financed by the Commission which provides information free of charge for citizens and businesses on EU law. It received 150 queries between the date on which the Regulation became applicable and 15 November 2015 (this represents only 0.8 % of all passenger rights queries), of which over 80 % relate to passenger rights in the event of delay or cancellation. NEB reports that give the reasons for passenger complaints show similar or even higher percentages of complaints relating to a lack of assistance or compensation in the event of delay or cancellation.

²⁴ e.g. complaints about services that fall outside the scope of the Regulation, e.g. complaints related to hygiene or the quality of the service

²⁵ e.g. complaints about compensation for cancellation or delay caused by weather conditions endangering the safe operation of the ship.

²⁶ Although Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63) aims at ensuring access to alternative dispute resolution procedures for contractual disputes between EU-resident consumers and EU-established traders among others in the transport sector.

to pursue their claims in court, which is costly and time-consuming, and therefore discourages them from enforcing their rights.

c) *Difficulty in interpreting certain provisions*

Some provisions in the Regulation have been interpreted differently by NEBs or operators.²⁷

Stakeholders argued that the Regulation does not need to be amended in order to clarify these provisions, but that the Commission and NEBs should agree on how they should be applied in practice.

4.2 Commission action to improve application of the Regulation

The Commission took the following measures to address the issues identified above:

a) *Action to raise awareness of passengers' rights and operators' obligations*

In June 2013, the Commission launched a two-year information campaign on passenger rights for all modes of transport, including waterborne. This included printed material (posters and leaflets available at several ports and on vessels throughout the EU), the use of social media (YouTube, Facebook, Twitter), a mobile phone app and participation in tourism fairs.

The Commission published a summary of the Regulation which is widely used by NEBs and operators to inform passengers about their rights.

b) *Action to improve enforcement*

The Commission launched infringement proceedings against all Member States that failed to take the necessary measures to apply the Regulation.

It has organised annual EU-level meetings at which NEBs and stakeholders could share their experiences about the application of the Regulation and exchange good practice.

A non-compulsory standard form has been produced in cooperation with NEBs to help citizens to present their complaints.

In addition, the Commission provided guidance and good practices at the annual meetings with the NEBs to enhance cooperation between NEBs.

c) *Action to ensure uniform application of the Regulation*

At the annual meetings with the NEBs and stakeholder representatives and through written correspondence, the Commission provided clarification on the practical application of several provisions in the Regulation, thus contributing to its uniform application throughout the EU.

²⁷ For instance, different views were expressed as to which services are covered by the Regulation if the port of embarkation is in a non-EU country and the port of disembarkation is in a Member State (see Article 2(1)(b) read together with Article 3(e)) or whether the obligation of the carrier to re-route passengers 'under comparable conditions' in the event of delay or cancellation (Article 18(1)(a)) should be interpreted as including the possibility of re-routing them by other modes of transport.

5. CONCLUSIONS AND NEXT STEPS

The Commission considers that overall implementation of the Regulation is satisfactory. The Regulation is recent and appears to be sufficiently flexible to accommodate improvement without the need for amendments at this stage. This is also the stakeholders' view.

Nevertheless, to overcome the remaining obstacles that passengers face in enjoying their rights or having them enforced, the Commission:

- will launch its third (two-year) passenger rights information campaign in 2016, focusing on social media. It invites NEBs, the industry, passenger rights organisation and other stakeholders to join its efforts or to launch similar activities at their level;
- will continue the ongoing infringement procedures against the Member States concerned until they have operational NEBs and penalty systems in place that allow them to penalise any breach of the Regulation;
- invites NEBs to carry out visits on board ships and in terminals, *inter alia* to verify how the Regulation is applied in practice and to educate operators about their obligations under the Regulation. NEBs are also invited to check carriers' homepages to ensure *inter alia* that they contain information on passenger rights and that general contract terms are in line with the Regulation;
- encourages those Member States that currently do not offer an alternative dispute resolution mechanism for passenger rights to put such a mechanism in place in accordance with Directive 2013/11/EU²⁸ so as to give passengers quicker and less expensive redress of their rights;
- will continue to organise regular meetings with NEBs and stakeholders' representatives to reach a common understanding on the interpretation and implementation of the Regulation, and to enhance cooperation and the sharing of experiences (difficulties encountered and good practice); and
- will, if the need arises, publish general interpretative guidelines in order to provide more clarity (as it has in the past for other transport modes) and/or good practice documents on specific issues (e.g. how to respond better to the specific needs of persons with disability or reduced mobility).

²⁸ See footnote 24.