



EUROPEAN
COURT
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Audit brief



Passenger rights in the EU

November 2017

The European Union (EU) is the only area in the world with a set of rules designed to ensure a minimum level of protection for passengers in the main modes of transport (air, rail, waterborne and bus/coach). Passenger rights are one of the flagship policies that the EU delivers directly to its citizens.

A number of problems have become apparent since the adoption of current legislation on passenger rights. There are inconsistencies, grey zones and gaps in legislation, passengers are insufficiently aware of their rights, and these rights may not be interpreted and enforced uniformly within the Union.

Our auditors will examine what action the Commission has taken to monitor and enforce the EU's passenger rights policy. We will also visit ten Member States (the Czech Republic, France, Finland, Greece, Germany, Ireland, Italy, the Netherlands, Poland and Spain) to meet officials and relevant stakeholders and assess implementation on the ground.

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THE CONCEPT OF PASSENGER RIGHTS

Passenger rights are one of the flagship policies that the European Union (EU) delivers directly to its citizens¹.

Over the last two decades, there has been a boom in intra-EU travel thanks to the liberalisation of the transport sector in the Single Market, the free movement of citizens and the entry into force of the Schengen Agreement in 1995. For example, the annual number of air passengers has increased more than three times in that period².

The aim of EU's passenger rights legislation is to empower and protect European consumers. There are ten core EU passenger rights common to all modes of transport (see **Table 1**).

Table 1 – Ten Core EU Passenger Rights

1. Non-discrimination in access	Protection against direct or indirect discrimination based on nationality, residence, disability or reduced mobility.
2. Mobility	Accessibility and assistance at no additional cost for passengers with disability and reduced mobility.
3. Information	Provision of information before the purchase of tickets, at various stages of travel and, importantly, in cases of disruption.
4. Renounce travelling in case of disruption	Right to withdraw from the contract and have ticket price reimbursed for long delays, cancelled travel or denied boarding.
5. Fulfilment of the transport contract in case of disruption	Right to receive alternative transport as soon as possible, or to rebook for long delays, cancelled travel or denied boarding.
6. Assistance in case of delay or cancellation	Minimum level of care during long delays.
7. Compensation under certain circumstances	Financial compensation in cases of long delays, cancelled travel and in case of involuntarily denied boarding in air travel.
8. Carrier liability towards passengers and their baggage	Liability and compensation for e.g. death or injury of passengers and damage to luggage.
9. Quick and accessible system of complaint handling	Right to lodge a complaint with carrier if dissatisfied with service. Right to subsequently lodge a complaint with the responsible National Enforcement Body (NEB).
10. Right to full application and effective enforcement of EU law	Right to expect EU passenger rights to be applied properly by carriers. NEBs should enforce EU rules by applying effective, proportionate and dissuasive sanctions for infringements.

Source: COM(2011) 898 final.

REGULATING AND IMPLEMENTING THE EU PASSENGER RIGHTS

Main provisions regulating passenger rights

The EU first laid down passenger rights in 2004, for air passengers. By 2014, it had established Regulations covering all four main modes of passenger transport (bus/coach, air, rail and waterborne transport).

The core passenger rights are the same for all of these modes of transport, but the extent of coverage and specific rules differ from one Regulation to another. **Table 2** summarises the main provisions regulating passenger rights in the four modes of transport.

Table 2 – The main provisions regulating passenger rights

<p>Air passenger rights</p> <p>Regulation (EC) No 261/2004</p>	<p>This Regulation applies to passengers departing from an airport located in the territory of a Member State or departing from an airport located in a third country to an airport situated in the territory of a Member State, if the operating air carrier of the flight concerned is an EU carrier.</p>
<p>Rail passenger rights</p> <p>Regulation (EC) No 1371/2007</p>	<p>This Regulation applies to all rail journeys and services throughout the EU provided by one or more licensed railway undertakings. Member States may derogate from the majority of these rules for domestic rail passenger services until 2024. The Commission tabled in September 2017 a recast of the Regulation which proposes to reduce the possibilities for derogations.</p>
<p>Waterborne passenger rights</p> <p>Regulation (EU) No 1177/2010</p>	<p>This Regulation applies in respect of passengers travelling on passenger services where the port of embarkation is situated in the territory of a Member State or on passenger services where the port of embarkation is situated outside the territory of a Member State and the port of disembarkation is situated in the territory of a Member State, provided that the service is operated by an EU carrier.</p>
<p>Bus and Coach passenger rights</p> <p>Regulation (EU) No 181/2011</p>	<p>This Regulation applies to passengers travelling on regular passenger services where the boarding point or the alighting point of the passengers is situated in the territory of a Member State and where the scheduled distance of the service is 250 km or more. Until March 2021, Member States may derogate from most of the provisions of the Regulation (e.g. for regular domestic services).</p>

Several non-EU countries have implemented similar regulations, but their scope has focused mostly on air passenger rights.

Roles and responsibilities: EU and Member State level

European Commission

The Commission is responsible for monitoring the implementation of passenger rights in the EU and keeping track of current developments in the area of passenger rights and, where necessary, for proposing changes to the legislation to ensure that those rights are protected effectively. This requires the Commission to maintain close and active contacts with the main stakeholder groups such as carriers, National Enforcement Bodies (NEBs) and consumer protection organisations.

Carriers

A carrier is a company that provides transport services and with whom the passenger has concluded a contract of carriage. The terms of such a contract may include provisions that are not included in the scope of the Regulations and, as conditions are normally carrier-specific, such contracts may offer passengers differing levels of protection.

National Enforcement Bodies

All four Regulations require the Member States to establish NEBs to ensure compliance with the provisions of those Regulations. The role of these bodies is not clearly defined in any of the Regulations. In practice, some of them monitor the general enforcement of passenger rights in the Member State while others also deal with individual complaints.

The Regulations allow for different arrangements as regards individual complaints: passengers may submit complaints concerning infringements of their rights to carriers, to terminal operators or directly to NEBs. In most Member States individual complaints must first be addressed to the carrier.

Currently, there are no comprehensive statistics concerning the number of complaints received or the time necessary to handle them. Reporting on complaints received is obligatory only for rail companies.

European Consumer Centres

European Consumer Centres (ECCs) are public or private bodies designated by the Member States (as well as Iceland and Norway) and co-financed through the EU Consumer Programme. They provide help and advice to consumers free of charge on matters related to cross-border purchases. All Member States have designated an ECC. The work of the ECCs is coordinated by the Directorate-General for Justice and Consumers.

Depending on which ECC they contact, passengers complaining about rights violations may be provided with legal advice or referred to a NEB (the ECC has no power to gather evidence about the causes of delays, etc.). Some ECCs also carry out promotional activities to increase awareness about passenger rights.

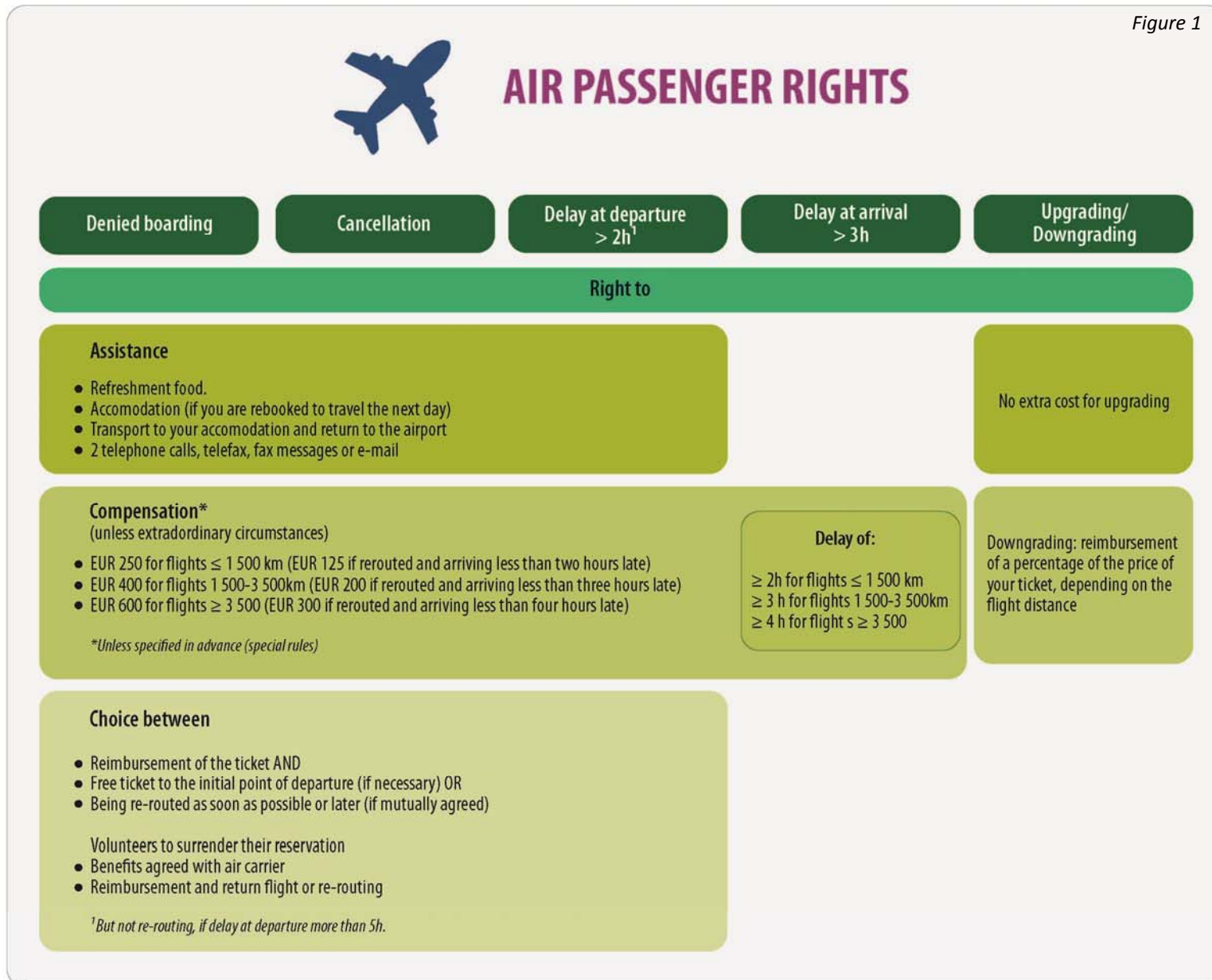
Specific Passenger Rights for information, care and compensation

Figures 1 to 4 provide an overview of the specific rights for information, care and compensation in the four modes of transport.

PUBLIC AWARENESS OF PASSENGER RIGHTS

Public awareness of passenger rights is relatively low:

- According to data provided by the Commission in 2013, only 5 % to 10 % of air passengers had ever lodged a complaint after experiencing disruption³.
- In a 2014 Eurobarometer survey on passenger rights 31 % of passengers responded that they were aware of the EU's passenger rights framework and 35 % of respondents indicated that they had already submitted a complaint after experiencing transport disruption⁴.





BUS AND COACH PASSENGERS RIGHTS

Figure 2

Delay in departure
< 90 minutes

Delay in departure
> 90 minutes

Delay in departure
> 120 minutes

Cancellation

Information

- Situation: as soon as possible, at least 30 minutes after scheduled departure
- Estimated departure time: as soon as information is available

Assistance (only journeys > 3h)

- **Meals and refreshments** (proportionate to waiting time/delay and if available/can be reasonably supplied)
- **Accommodation** (max. 2 nights and 80 euro per night)

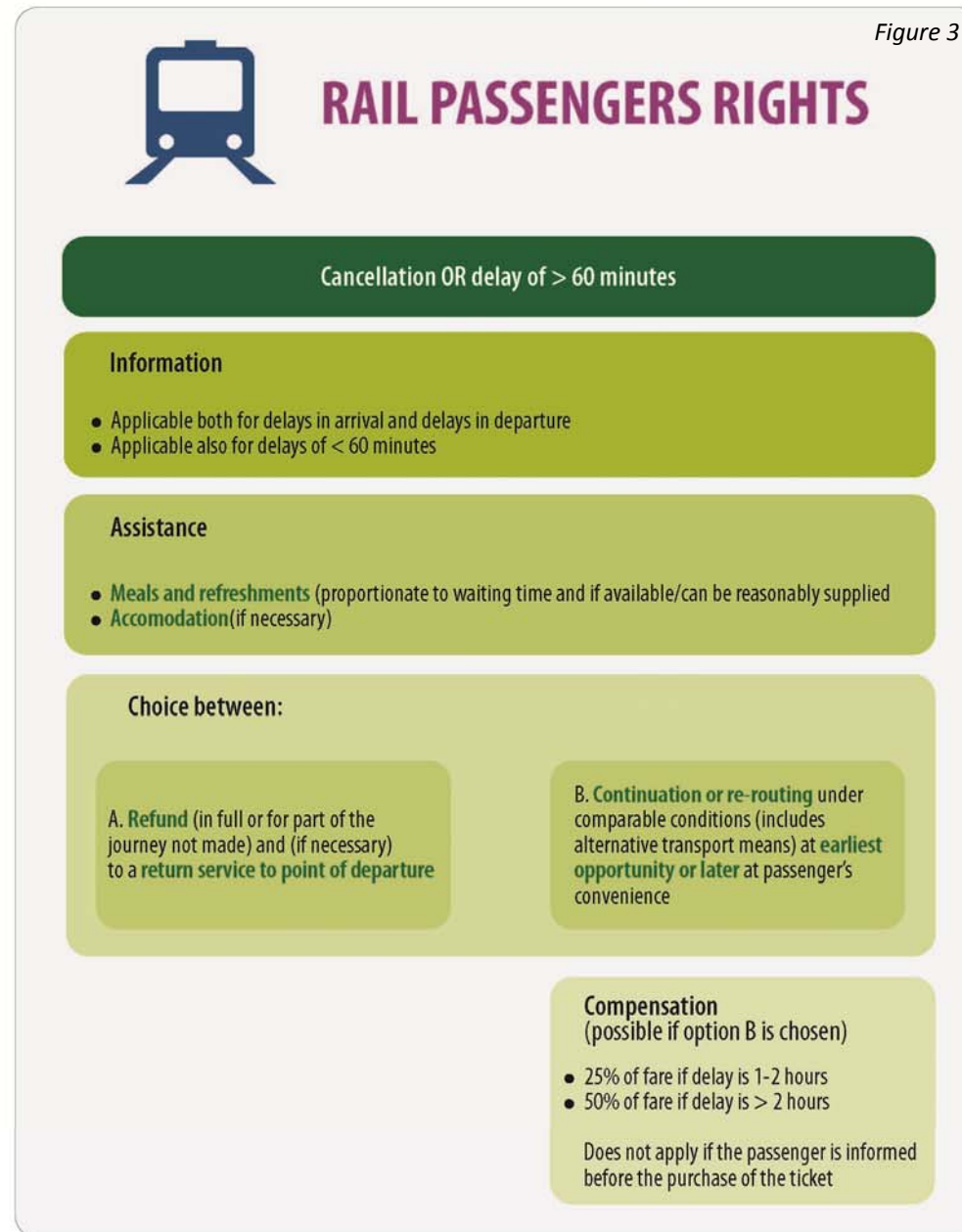
Accommodation need not be provided if cancellation or delay is caused by severe weather conditions or natural disasters.

Choice between

- **Continuation or re-routing** under comparable conditions to final destination at earliest opportunity
- **Refund** and, where relevant, **free journey to initial departure point** at earliest opportunity

Compensation

If carrier **fails to offer the choice** between refund or re-routing, passenger has right to **compensation of 50% of ticket price** in addition to reimbursement





SHIP PASSENGER RIGHTS

Figure 4

Delay in arrival

Delay in departure < 90 minutes

Delay in departure > 90 minutes

Cancellation

Information

- Situation: as soon as possible, at least 30 minutes after scheduled departure
- Estimated arrival/departure time: as soon as information is available

Compensation*

- 25% of the ticket price for:
 - delay \geq 1 h in journey < 4 h
 - delay \geq 2 h in journey 4-8 h
 - delay \geq 3 h in journey 8-24 h
 - delay \geq 6 h in journey > 24 h
- 50% of the ticket price if delay is doubled

**No compensation if delay is caused by severe weather or extraordinary circumstances.*

Assistance*

- **Meals and refreshments** (proportionate to waiting time and if available/can be reasonably supplied)
- **Accommodation** (max. 3 nights and 80 euro per night)

Accommodation need not be provided if the cancellation or delay is caused by bad weather.

**Does not apply if the passenger is informed before the purchase of the ticket.*

Choice between

- Re-routing to final destination under comparable conditions
- Refund and, where relevant, return ticket to point of departure

STATE OF PLAY FOR PASSENGER RIGHTS WITHIN THE EU

Air passenger rights

In 2011, the Commission's report on the application of the Air Transport Regulation⁵ identified key issues concerning grey zones and gaps in the text of the Regulation, and inconsistencies in enforcement in different Member States. Many of these issues led to disputes between passengers and air carriers, disputes that subsequently needed to be clarified by the European Court of Justice (ECJ).

In 2013 the Commission proposed an amendment⁶ to the Regulation with the aim of enhancing and clarifying passenger rights, and ensuring that air carriers complied with the Air Transport Regulation, while taking into consideration the cost to air carriers of doing so. The proposal for amendment has been under discussion since then; no political agreement has been reached.

Rail passenger rights

The Rail Regulation came into force in 2009. An external evaluation⁷ of the implementation was conducted in 2012 to gather information for the Commission's report to the European Parliament and the Council⁸. In the rail sector it is important to note that Member States can derogate from most of the Regulation's provisions: in 2015, only four Member States (Denmark, Italy, the Netherlands and Slovenia) were applying the Regulation in full, while five Member States (Bulgaria, France, Ireland, Latvia and Romania) had opted for full exemption.

Some rail carriers have voluntarily introduced conditions providing passengers with more rights or more favourable conditions than those required by the Regulation. Nevertheless, a large number of implementation challenges remain, including derogations diminishing the original intent or scope of the legislation, lack of rules on connecting journeys, combining tickets from several providers, etc. The Commission has proposed a set of solutions to these problems in its update to the Rail Passenger Rights Regulation of September 2017⁹.

Waterborne passenger rights

The Regulation on waterborne passenger rights came into force in 2012. An ex-post evaluation report¹⁰ in 2016 did not identify any “[...] *deliberate, severe or systematic non-compliance with the Regulation*”. According to this evaluation, the NEBs had received very few complaints, and many of these complaints did not fall within the scope of the Regulation. However, there are no publicly available figures on complaints submitted to carriers or terminal operators, nor is there any obligation for them to collect and submit such data. Therefore, the statistics collected by the NEBs do not show the full picture.

Bus and coach passenger rights

The bus and coach transport market differs from the air and rail markets. The majority of carriers are small and medium-sized companies which share infrastructure with other users. Therefore, unlike in other transport modes, long delays in arrival do not trigger compensation. Bus passengers typically include some of the more vulnerable members of the population (such as students or elderly people) and those living in remote areas.

The Bus and Coach Transport Regulation became applicable in 2013. According to an evaluation carried out in 2016 by the Commission¹¹, there are several obstacles that prevent passengers from fully enjoying their rights. These include:

- a lack of suitable bus and coach terminals;
- insufficient legal provisions to improve accessibility to terminals and buses; and
- numerous exemptions granted by the Regulations, about which passenger organisations have voiced their concern.

IMPLEMENTATION CHALLENGES AND CRITICISM

In 2012, the European Parliament concluded that some passenger rights were incompletely and incorrectly applied, and were not being properly monitored and enforced at EU and national level (the Bach report)¹². The Parliament also found that the provisions of EU Regulations were sometimes unclear, and that passengers were not fully aware of their rights. The Parliament called on the Commission and the Member States to remedy these issues.

In 2015, in another resolution¹³, the Parliament stressed the need to eliminate all possible loopholes in the legislation and called for the establishment of a seamless multimodal passenger transport system and of a 'Charter of Passenger Rights'. The idea of a consolidated framework for passenger rights was further examined in the report and study requested by the Committee on Transport and Tourism in the framework of the 'Cost of Non-Europe' initiative¹⁴.

MAIN RISKS IDENTIFIED WHEN PREPARING THE AUDIT

When preparing our audits, we carry out a risk analysis of the policy area or programmes that we intend to examine. The main risks to the effective enforcement of the EU Passenger Rights Regulations are related to the following areas:

- the policy objectives to be attained through existing EU legislation remain ambiguous, and the passenger rights framework provides different levels of protection across the four modes of transport;
- certain practical elements of passenger activities, such as connecting flights or multimodal connections, are not covered by the existing framework of rights;
- passenger rights are not publicised well, and awareness among EU consumers remains low;

- the implementation of the rights is dependent on Member-State-specific arrangements; and
- only partial information is publicly available about the state of the enforcement of EU passenger rights across the EU and at the national level.

Our auditors will examine the Commission's activities in relation to the monitoring and enforcement of the EU's passenger rights policy. We will also visit ten Member States (the Czech Republic, France, Finland, Greece, Germany, Ireland, Italy, the Netherlands, Poland and Spain) to meet officials and relevant stakeholders and assess implementation of the Regulations on the ground.

ABOUT ECA SPECIAL REPORTS AND AUDIT BRIEFS

The special reports set out the results of our audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit briefs provide some background information in relation to an on-going audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme subject to our audit.

If you wish to contact our team in charge of this audit, please do so through the following mail address: ECA-PassengerRights@eca.europa.eu

¹ http://europa.eu/youreurope/citizens/travel/passenger-rights/index_en.htm

² According to the World Bank Development Indicators, the number of air passengers in European Union was 300 million in 1995 and increased to 900 million in 2016.

³ SWD(2013) 62 final, Impact assessment accompanying the document Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air.

⁴ The Eurobarometer report can be found at :
http://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb81/eb81_publ_en.pdf

⁵ COM(2011) 174 final of 11 April 2011, Communication from the Commission to the European Parliament and the Council on the application of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

⁶ COM(2013) 130 final of 13 March 2013, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air.

⁷ Evaluation of Regulation 1371/2007, Final Report, prepared by Steer Davies Gleave for DG MOVE, July 2012.

⁸ COM(2013) 587 final of 14.8.2013, Report from the Commission to the European Parliament and the Council, 'Report on the Application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on Rail Passengers' Rights and Obligations'.

⁹ COM(2017) 548 final of 27.09.2017 "Proposal for a Regulation of the European Parliament and of the Council on rail passengers' rights and obligations (recast)"

¹⁰ COM(2016) 274 final of 24 May 2016, 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'.

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- ¹¹ COM(2016) 619 final, Report from the Commission to the European Parliament and the Council, 'Report on the application of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004'.
- ¹² European Parliament resolution of 23 October 2012 on passenger rights in all transport modes (2012/2067(INI)) (the so-called Bach report).
- ¹³ European Parliament resolution of 7 July 2015 on delivering multimodal integrated ticketing in Europe (2014/2244(INI)).
- ¹⁴ Study on Codification of Passenger Rights, Cost of Non-Europe Report, July 2015 – PE 536.367.