

**RULES ON PENALTY PROCEEDINGS FOR INFRINGEMENTS
OF THE PROVISIONS OF REGULATION (EC) NO. 1371/2007
ON RAIL PASSENGERS' RIGHTS AND OBLIGATIONS ¹**

**Article 1
Definitions**

- a) "Decree establishing the Authority": Decree-Law No. 201 of 6 December 2011, as converted with amendments into Law No. 214 of 22 December 2011, as amended by Article 36 of Decree-Law No. 1 of 24 January 2012, as converted with amendments into Law No. 27 of 24 March 2012, establishing the Transport Regulation Authority;
- b) "Regulation": Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations;
- c) "legislative decree": legislative decree No. 70 of 17 April 2014 laying down rules on penalties for infringements of the provisions of Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations;
- d) "Authority": the Transport Regulation Authority, established by Article 37 of Decree-Law No. 201 of 6 December 2011, as converted with amendments into Law No. 214 of 22 December 2011, as amended by Article 36 of Decree-Law No. 1 of 24 January 2012, as converted with amendments into Law No. 27 of 24 March 2012;
- e) "railway undertaking": any public or private undertaking holding a licence, whose main business is to provide rail transport services for goods and/or passengers by rail, on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;
- f) "infrastructure manager": any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems;
- g) "station manager": manager of relevant infrastructure;
- h) "ticket vendor": any retailer of rail transport services concluding transport contracts and selling tickets on behalf of a railway undertaking or for its own account;
- i) "tour operator": an organiser or retailer, other than a railway undertaking, within the meaning of Article 2 points (2) and (3) of Directive 90/314/EEC;
- l) "undertaking": railway undertaking, infrastructure manager, station manager, ticket vendor or tour operator concerned with the notice of initiation of the penalty proceedings under these rules;
- m) "Board": collegial body of the Authority;
- n) "Offices": the Authority's organisational units, as referred to in Article 13 of the Rules on the Authority's organisation and operation adopted by ART Decision No. 1 of 16 October 2013;
- o) "SiTe": computerised complaint handling system to be adopted under Article 4 (4) of the legislative decree;

¹ Annex to ART Decision No 52 of 4 July 2014

- p) “Rules on penalties”: rules for the conduct of penalty proceedings adopted by the Authority by Decision No 15/2014 of 27 February 2014.

Article 2

Scope

1. These rules shall apply, in compliance with the relevant current legislation, to the proceedings for the assessment of infringements and the imposition of penalties within the Authority’s remit pursuant to the legislative decree and for the adoption of related measures. Further, these rules govern the procedural arrangements for the adoption of provisional remedies and the evaluation of the commitments referred to in Article 37 (3) (f) of the decree establishing the Authority with reference to rail passengers’ rights and obligations.
2. The Authority may assess infringements for non-compliance, with respect to one or more events, related to individual users or user groups and for systematic and *erga omnes* non-compliance of the railway undertaking.

Article 3

Submission of complaints to the Authority

1. The Authority may assess infringements and impose penalties falling within its remit on its own initiative or as a result of complaints lodged by passengers, including through associations representing their interests, where expressly delegated to do so. Complaints shall be lodged by completing the form provided in Annex A to these rules.
2. Complaints shall be sent by registered letter with acknowledgement of receipt or by certified mail. As soon as the SiTe system enters into operation, complaints shall be preferably sent through this system.
3. Complaints to the Authority may be pursued only where they have been already lodged with the railway undertaking or, depending on the cases provided for in the legislative decree, to the infrastructure manager, station manager, ticket vendor or tour operator, or where thirty days or, in justified cases, three months have expired without any action taken, as provided for by the proceedings initiated after submission of the complaint to the undertaking.
4. The provisions of this article shall also apply to the complaints forwarded by the competent regional structures referred to in Article 4 (4) of the legislative decree and identified by decree of the Minister of Infrastructure and Transport.

Article 4

Preliminary examination

1. The Authority exercises the powers referred to in these rules on the basis of the complaints received and not dismissed.
2. For the purpose of verification of the complaints lodged, the Authority may request information and documents to all parties involved and may order inspections.

3. The Head of the competent Office may pool together the complaints which are likely to be verified and handled jointly. Where the case is not immediately dismissed, with a brief statement of reasons, the Head of the competent Office may propose the initiation of the proceedings by drafting the statement of objections referred to in following article 5 (1).

Article 5

Initiation of proceedings and allegation of infringement

1. Where the Board, based on the information collected by the Office as a result of the activities referred to in Article 4, recognizes the existence of conditions for the adoption of measures imposing penalties, it makes the decision about the initiation of the proceedings and appoints the person in charge of the proceedings.

2. The statement of objections, whereby the penalty proceedings are initiated, shall be notified to the undertaking according to the procedures referred to in Article 14 of Law No. 689 of 24 November 1981 and contains a summary of the facts, the indication of the alleged infringement, the person in charge of the proceedings, the amount of penalty which could be imposed as a result of the proceedings, the Office to which written statements or justifications may be addressed and where files may be accessed in accordance with Article 9 (2), as well as the deadline by which the parties concerned may exercise these rights and the indication to the option for the reduced payment in accordance with article 16 of Law No 689 of 24 November 1981.

3. The statement of objections shall also include the indication of the deadline for completing the penalty proceedings as from the notification of the statement of objections.

4. Where the assessed infringement is still in place, the statement of objections also includes the formal notice to terminate the infringement within one month at the latest. In this case the terms set out in Article 7 are considered to be extended for forty days.

5. The compliance with the notice to terminate the infringement or non-compliance therewith is in any case assessed pursuant to the law, also for the purpose of the penalties to be imposed upon conclusion of the proceedings.

6. The Authority may in any case take urgent interim measures as referred to in Article 10.

7. Every three months the Head of the competent Office shall submit to the Board a report on the proceedings which have been initiated or dismissed.

Article 6

Time-limits for proceedings

1. The time-limit for the adoption of the final measure is 120 days from the date of notification of the statement of objections referred to in Article 5, without prejudice to the provisions of article 8.

2. Within 90 days the person in charge of the proceedings shall conclude the preliminary inquiries on the disputed facts and submit the files referred to in article 9 to the Board, which is competent for the imposition of penalties.

3. The time-limits are suspended where it is necessary to carry out further inquiries as referred to in Article 7.

Article 7 Inquiries

1. Where it is necessary to obtain information or further background information, the person in charge of the proceedings may propose to the Head of the Office to order expert's reports or request additional information and documents to the persons who hold such information or documents.
2. The Authority's request to the above-mentioned persons shall include:
 - a. facts and circumstances which are asked to be clarified;
 - b. purpose of the request;
 - c. time-limits for receiving replies or sending documents;
 - d. procedures to supply the information and person in charge of the proceedings;
 - e. applicable penalties, if any.
3. The suspension of the time-limits referred to in paragraph 3 of Article 6, which in any case may not exceed 60 days, applies:
 - a. from the date of reference number of the request to the date of reference number of the document whereby the Authority receives the information or the additional background material;
 - b. from the date of reference number of the appointment of the expert to the date of reference number on which the Authority receives the expert's report.

Article 8 Participation in the proceedings

1. The railway undertaking receiving the notice of initiation of penalty proceedings shall send written comments and documents within 30 days from the date of notification of the statement of objections.
2. The railway undertaking concerned with the notice of initiation of penalty proceedings may request, by separate application, to have access to the files of the proceedings.
3. The railway undertaking concerned with notice of initiation of penalty proceedings may request, by separate application, to be heard with respect to the objections raised. The hearing is communicated with a 7-day notice and is held before the person in charge of the proceedings. If the railway undertaking requests so, it may be represented by its legal representative or special attorney duly informed about the facts. The minutes of the hearing are drawn up and signed by the person in charge of the proceedings or other officer appointed by the Head of the Office as well as by the representative and/or attorney of the party concerned. A copy of the minutes is delivered to the party.

Article 9

Conclusion of inquiries and adoption of measures imposing penalties

1. The Head of the Office shall submit to the Board the draft measure together with a detailed report on the inquiries drawn up by the person in charge of the proceedings.
2. Having examined the report and evaluated the draft measure, the Board either adopts the penalty measure or provides for dismissal of the proceedings.
3. If further inquiries are deemed necessary, the Board shall re-address the case to the Head of Office specifying the nature and type of inquiries to be further carried out. In special cases, the request for further inquiries may be repeated, but no more than once. The request for further inquiries determines a further thirty-day extension of the period referred to in Article 7 (1).
4. The measure imposing the penalty, properly substantiated, shall include the precise indication of the deadline to apply to the court of appeal and should be notified by the person in charge of the proceedings to the undertaking concerned according to the procedures referred to in Article 14 of Law No 689 of 24 November 1981.

Article 10

Provisional remedies

1. In case of particular urgencies and upon assessment – after a brief review of the case - of the infringements referred to in article 2.1, which fall within its remit, the Authority may on its own initiative determine by reasoned decision, the adoption of provisional remedies under Article 37 (3) (f) of the decree establishing the Authority, even before initiating the penalty proceedings.
2. The measure concerning the adoption of provisional remedies contains a sunset clause and can be neither renewed nor extended. The provisional remedies shall automatically terminate in the event of failure to initiate the penalty proceedings within 30 days of the adoption of such remedies.
3. Within 15 days of the notification of the measure concerning the adoption of provisional remedies, the recipient may submit a documented and substantiated request for review of the measure.

Article 11

Commitments

The provisions laid down in the rules on penalties shall apply to commitments.

Article 12

Communication of measures

The competent office shall notify the measure imposing penalties adopted by the Board and shall communicate dismissals in accordance with the procedures provided for by law.

Article 13

Deadline for payment of penalties

1. Payment of the fines shall be made within thirty days of the date of notification of the final measure.
2. Upon expiry of the deadline referred to in paragraph 1, interest on late payment at the statutory rate shall be paid for delays of less than six months.
3. In case of further delay, in accordance with Article 27 (6) of Law No 689/1981, the amount due is increased by one tenth for each half-year with effect from the day following the expiry of the deadline for payment and up to the day when the payment order is transmitted to the agency in charge of the collection; in this case the increase incorporates the interest on late payment accrued in the same period.

Article 14

Criteria for determination of penalties

The penalties imposed by the Authority under these rules shall be calculated on the basis of the criteria set out in Article 5 (3) of the legislative decree.

Article 15

Confidentiality

The information obtained in the course of the proceedings and in the conduct of the activities referred to in Article 4 shall be subject to confidentiality obligations and shall be used only for the exercise of the powers statutorily conferred upon the Authority, without prejudice to the obligations concerning reporting and cooperation provided for by law.

Article 16

Procedural guarantees

In matters not expressly covered by these rules, reference is made to the provisions of Law No 241 of 8 August 1990, where applicable, to Law No 481 of 14 November 1995 and Law No 689 of 24 November 1981.

Article 17

Monitoring and inquiries

The Authority may at any time, even on a regular basis, monitor the compliance with the rules on rail passengers' rights and obligations by the undertakings. To this end it may request to carry out inquiries.

Article 18
Final provisions

These rules shall enter into force from the day of their publication on the Authority's website.

4 July 2014

Andrea Camanzi
President