

## **Activity report under article 29 of Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport**

### **1. The Authority and the legislative framework for the protection of passenger rights in bus and coach transport**

The Transport Regulatory Authority, established under Article 37 of decree-law No 201/2011, as converted with amendments into Law No 214/2011 (hereinafter: the Authority), has been designated as the body responsible for the enforcement of Regulation (EU) No 181/2011 concerning passenger rights in bus and coach transport <sup>1</sup> pursuant to Legislative Decree No 169 of 4 November 2014 <sup>2</sup>.

For the purpose of implementing article 28 of the Regulation, by legislative decree No 169/2014 the Authority was entrusted with the power to (i) carry out monitoring and inquiries on bus and coach services; ii) inquire into and assess the complaints lodged by passengers, for the purpose of identifying infringements of the obligations set out in the Regulation, (iii) assess infringements of the provisions of the Regulation and impose penalties as provided for in the legislative decree.

In exercising its powers, the Authority may obtain information and documentation from undertakings, terminal managing bodies or any other person concerned or involved; the Authority may also carry out controls and inspections on the above-mentioned persons.

As provided for by the legislative decree, by Decision No. 4/2015 the Authority adopted the rules on penalty proceedings applicable to infringements of the Regulation <sup>3</sup>.

### **2. Procedure for submission of complaints to the Authority**

In case of alleged infringement of EU legislation, before applying to the Authority, passengers are required to lodge their complaint *in the first instance* with the undertaking. The complaint shall be submitted, as provided for by the Regulation, within 3 months from the date on which the service was performed or should have been performed.

Carriers shall set up or have in place a system for handling the complaints concerning the rights and obligations set out in the Regulation. Within 1 month of receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 3 months from the receipt of the complaint.

Only in case of unsatisfactory reply or, in case of no reply, ninety days after the complaint has been submitted to the carrier, passengers may apply to the Authority. As for regional and local services, complaints may be lodged with special regional structures, as identified by decree of the Minister of Infrastructure and Transport of 9 October 2015 ([http://www.mit.gov.it/mit/mop\\_all.php?p\\_id=25273](http://www.mit.gov.it/mit/mop_all.php?p_id=25273)), which shall forward the complaints to the Authority on a monthly basis.

It should be pointed out that bus and coach passenger services for which complaints may be lodged with the Authority are regular services, namely those which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined

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<sup>1</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (hereinafter "Regulation").

<sup>2</sup> Legislative Decree No 169 of 4 November 2014 on rules on penalties applicable to infringements of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (hereinafter "legislative decree No 169/2014").

<sup>3</sup> Rules on penalty proceedings for infringement of the provisions of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No. 2006/2004 adopted by ART Decision No 4/2015 of 20 January 2015 (hereinafter "Rules on penalty proceedings").

stopping points. Therefore, occasional services providing for the carriage by bus or coach, i.e. those services constituted on the initiative of the customer or the carrier himself, are excluded from the scope of the Regulation.

Finally, the Authority is not competent to settle disputes between consumers and undertakings, nor to impose penalties on regulated parties in case of compensation and assistance in the event of accidents.

Passengers - also through associations representing their interests, where expressly delegated to do so - may apply to the Authority *in the second instance* to report infringements of the obligations referred to in the Regulation.

In order to facilitate relations with passengers, the Authority has set up a passenger rights section on its website (<http://www.autorita-trasporti.it/>), including EU and national legislation for the protection of users in rail transport, bus and coach transport and transport by sea and inland waterway. The section includes the forms - available in English as well - for the submission of the complaints to the Authority.

For bus and coach transport, the form, to be appropriately filled in by passengers, shall be forwarded to the Authority by any of the following:

- registered letter to the following address: via Nizza 230, 10126 - Torino;
- e-mail to the following address: [pec@pec.autoritatrasporti.it](mailto:pec@pec.autoritatrasporti.it), or to: [reclami-bus@autorita-trasporti.it](mailto:reclami-bus@autorita-trasporti.it).

Pursuant to legislative decree No 169/2014 complaints may be lodged by passengers also by electronic means, in accordance with the technical procedures established by Authority's decision.

For this purpose, the Authority set up - at first on an experimental basis - an online electronic tool for the submission of complaints (SiTe). The system allows, through a wizard, to lodge complaints directly on-line after registration and release of login ID and password. Upon completion of the procedure by uploading all the requested documents, the system allows for the electronic submission to the Authority and the user may verify the registration of the complaint. The electronic tool is available in English as well.

### **3. Alerts and complaints received by the Authority**

Whilst the Regulation provides that by 1 June 2017 the enforcement body publishes a report on its activity in the previous 2 calendar years, this Report includes data consolidated as of today, i.e. including the first quarter of 2017.

In the reference period, the Authority, as the body responsible for the enforcement of the Regulation, received alerts and complaints from passengers as shown in the chart below.

In this respect, it should be clarified that alert means the application sent by the user which is not presented in the prescribed manner (e.g. submitted before the expiry of 90 days from the submission of the complaint to the undertaking or including a general description of the problem); on the other hand, the complaint is the application which is properly filed and includes the essential elements for a complete assessment of the case reported by the user.

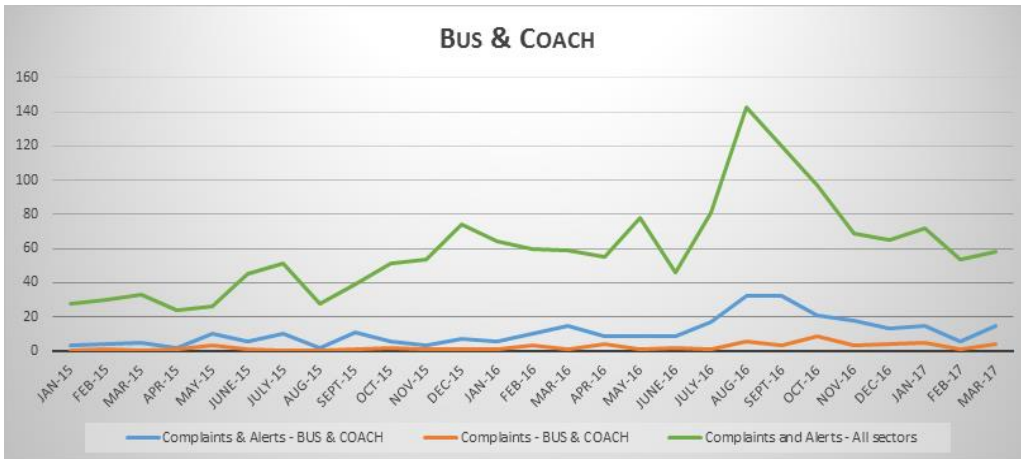


Chart 1 - Evolution in incoming complaints and alerts in bus and coach transport

As shown in the above chart, complaints and alerts for bus and coach services represent a limited part of the set of complaints and alerts received for all sectors for which the Authority is the body responsible for the enforcement of EU legislation on passenger rights.

	2015	2016	2017 1 <sup>st</sup> Quarter	Total
<b>Alerts</b>	58	153	26	237
<b>Complaints</b>	11	38	10	59
<b>Total</b>	69	191	36	296

In particular, during the reference period, the Authority received approximately 237 alerts and 59 complaints in relation to bus and coach services, which have highlighted a number of critical issues, as represented in the following charts:

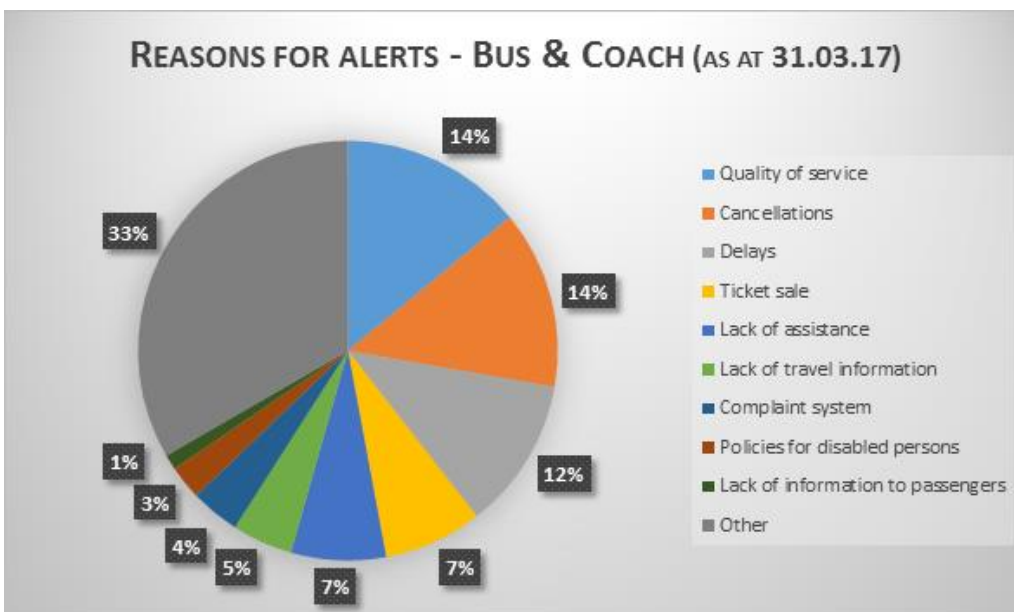


Chart 2 – Incoming alerts

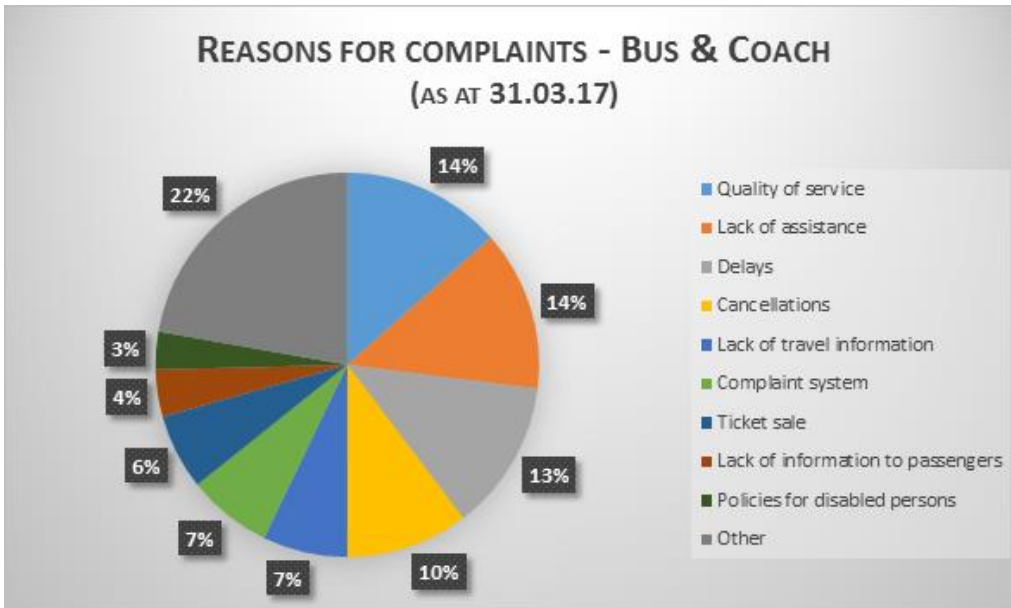


Chart 3 - Incoming Complaints

"Other" includes alerts/complaints pertaining to multiple issues (application for refund, general information requests, lost or stolen luggage, new timetable, impossible carriage of bicycles, no pets allowed on board, discriminatory contract or tariff conditions, etc.).

Finally, we wish to clarify both that each complaint/alert may contain more reasons for complaint and that the data on the complaints received from undertakings without specific registration and classification obligations are not available.

#### 4. Imposition of penalties

With respect to the penalty system provided for in legislative decree No 169/2014, penalties are determined on the basis of the assessed infringement and are proportionate not only to the seriousness, repetition of the infringement and actions taken to relieve or remove its effects, but also to the percentage ratio of passengers that have been concerned by the infringement to the passengers transported. Further, in accordance with the rules on penalty proceedings, where the assessed infringement is still in place, the statement of objections also includes the formal notice to terminate the infringement. Compliance with the notice to terminate the infringement or non-compliance therewith is in any case assessed in accordance with applicable law, also for the purpose of the penalties to be imposed.

In particular, the cases examined in the reference period concern the failure to reply to the complaints within the time-limits laid down by the Regulation, missing or inadequate information to passengers on their journey and on their rights, failure to disseminate timely and complete information to passengers by the operators in case of cancellation or delayed departure, failure to offer passengers - in the event of cancellation or delay - an alternative transport service to the final destination under comparable conditions or the reimbursement of the ticket price.

In the reference period, 5 penalty proceedings were initiated on bus and coach services. Those which have been already concluded are described here below in more detail:

- inquiry initiated by Decision No 119 of 17 December 2015 to investigate the infringement of Article 27 of the Regulation as regards the carrier's obligation to provide a final reply within 3 months from the receipt of the complaint submitted by the passenger;

- penalty proceedings initiated by Decisions No 82 of 21 July 2016 and No 96 of 4 August 2016 concerning the infringement of article 25 (1) and article 27 of the Regulation which provide for a number of obligations to be complied with by carriers with respect to:
  - i) information to be provided to passengers regarding their rights (including the contact details of the enforcement body responsible for checking the application of the Regulation);
  - ii) handling of complaints, where the Regulation provides for the deadline of 1 month for a preliminary reply and 3 months for the final reply to the user;
- penalty proceeding initiated by Decision No 137 of 24 November 2016 for infringement of article 25 (1) of the Regulation.

The following table shows the figures relating to the activity performed on these penalty proceedings as well as those concerning the activity in progress. The undertakings involved in the inquiries did not submit any proposals for commitments.

Initiation of penalty proceeding	Infringement of Regulation	Payment of reduced penalty	Amount of reduced penalty	Penalty measure	Penalty amount	Ongoing inquiries
Decision No 19/2015	- art. 27 ("Submission of complaints")			Decision No 44/2016	Euro 300.00	
Decision No 82/2016	- art. 25 ("Information on passenger rights") para. 1; - art. 27 ("Submission of complaints")	Decision No 124/2016 (infringement of art. 25 (1) and art. 27)	Euro 1,000.00			
Decision No 96/2016	- art. 25 ("Information on passenger rights"), para. 1; - art. 27 ("Submission of complaints")	Decision No 125/2016 (infringement of art. 25 (1))	Euro 500.00	Decision No 125/2016 (infringement of art. 27)	Euro 600.00	
Decision No 37/2016	- art. 25 ("Information on passenger rights"), para. 1; - art. 27 ("Submission of complaints")			Decision No 26/2017	Euro 1,400.00	
Decision No 32/2017	- art. 19 ("Continuation, re-routing and reimbursement"), paras. 1 and 2; - art. 20 ("Information"), para. 1 (in the event of cancellation or delay in departure)					v
<b>Total</b>		<b>2</b>	<b>Euro 1,500</b>	<b>2</b>	<b>Euro 2,300</b>	<b>1</b>

Table - Infringements of users' rights in bus and coach services until 31 March 2017

As for the quantification of the penalties, by Decision No 49/2017 the Authority adopted the "*Guidelines on the quantification of administrative fines*" in order to ensure consistency, transparency and impartiality in the exercise of its power to impose penalties. In this regard, the criteria for their determination which have been provided for in the abstract by the legislator were specified taking into account the differences between the parameters set out in Law No 689/1981, which are applicable to the cases falling within the general powers of the Authority to impose penalties, and the criteria for the quantification of penalties for infringements of passenger rights laid down by the legislative decrees implementing EU regulations concerning rail transport, bus and coach transport and transport by sea and inland waterway.

### **5. Other initiatives to ensure the enforcement of passenger rights**

In its report to the European Parliament and the Council of 27 September 2016 on the application of the Regulation, the EU Commission encouraged, *inter alia*, NEBs, which are responsible for its enforcement, to check carriers' homepages to ensure that they contain information on passenger rights.

In order to raise the operators' awareness of the obligations and rights provided for in the Regulation, upon handling each complaint, the Authority requested *ex officio* to the undertakings to provide evidence of the application of EU legislation, especially with respect to the information on passenger rights and the handling of complaints. In many cases the Authority's request led to the positive effect of having the undertakings involved pay greater attention to the compliance with the obligations imposed by EU legislation and, in some cases, implement a complaint handling system, which was not in place yet or did not comply with EU standards.

In addition, in order to promote greater awareness of passenger rights, specific requests for information have been sent in May 2017 to bus and coach undertakings to verify, in particular:

- i) how the obligations laid down in art. 25 ("*Information on passenger rights*") of the Regulation are implemented, indicating the contents and format – including photo evidence where appropriate - of the information on passenger rights made available to the public;
- ii) whether the information on passenger rights on the undertaking's website are directly accessible from the home page, by providing the relevant link;
- iii) how the obligations laid down in art. 26 ("*Complaints*") of the Regulation are implemented, specifying how the addresses for their submission are made public and whether such addresses are clearly identifiable and traceable also on the website, by providing the relevant link.

It is worth mentioning that the activities undertaken by the Authority in bus and coach transport also include the cooperation with EU National Enforcement Bodies (NEBS). In fact, where the complaints concerned regular services from points situated in another Member State, pursuant to Article 28 (1) of the Regulation, the application was sent to the competent authority responsible for its enforcement; furthermore, the Authority exchanged information on the measures adopted as provided for in Article 30 ("*Cooperation between enforcement bodies*") of the Regulation.