

## **Activity report under article 26 of 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**

### ***1. The Authority and the legislative framework for the protection of the rights of passengers when travelling by sea and inland waterway***

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. 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway<sup>1</sup> pursuant to Legislative Decree No 129 of 29 July 2015<sup>2</sup>.

For the purpose of implementing article 25 of the Regulation, by legislative decree No 129/2015 the Authority was entrusted with the power to (i) carry out monitoring and inquiries on sea and inland waterway 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 carriers, port and 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 legislative decree No 129/2015, by Decision No. 86/2015 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 and terminal operators shall set up or have in place an accessible system for handling complaints concerning the rights and obligations set out in the Regulation. Within 1 month of receiving the complaint, the carrier or terminal operator 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 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 also lodged with special regional structures, as identified by a decree of the Minister of Infrastructure and Transport currently under preparation, which shall forward the complaints to the Authority on a monthly basis.

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<sup>1</sup> (EU) Regulation 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 (hereinafter "Regulation").

<sup>2</sup> Legislative Decree No 129 of 29 July 2015 on rules on penalties applicable to infringements 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 (hereinafter "legislative decree No 129/2015").

<sup>3</sup> Rules on penalty proceedings for infringement of the provisions 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 adopted by ART Decision No 86/2015 of 15 October 2015 (hereinafter "Rules on penalty proceedings").

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.

Complaints may be lodged with the Authority for the following sea and inland waterway passenger services:

- services where the port of embarkation is situated in the territory of a Member State or where only the port of disembarkation is situated in the EU territory, provided that the service is operated by an EU carrier;
- cruises where the port of embarkation is situated in the territory of a Member State, with a few exceptions as identified by the Regulation.

This Regulation shall not apply in respect of passengers travelling on ships certified to carry up to 12 passengers, on ships which have a crew responsible for the operation of the ship composed of not more than three persons or where the distance of the overall passenger service is less than 500 metres, one way, on excursion and sightseeing tours and on ships not propelled by mechanical means.

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 complaints to the Authority.

For sea and inland waterway transport, the form, to be appropriately filled in by the passenger, 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: [art@autorita-trasporti.it](mailto:art@autorita-trasporti.it) .

Pursuant to legislative decree No 129/2015 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 period from 2015 to the 1<sup>st</sup> quarter 2017, the Authority, as the body responsible for the enforcement of the Regulation, received alerts and complaints from passengers as shown in the chart below, that clearly shows the peak close to summer 2016.

Unsurprisingly, the trend of complaints and alerts in this sector is strongly season-related.

In this respect, it should be clarified that alert means the application sent by the user which is not presented in the prescribed manner (for example, submitted before the expiry of 90 days from submission of the complaint to the carrier 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.

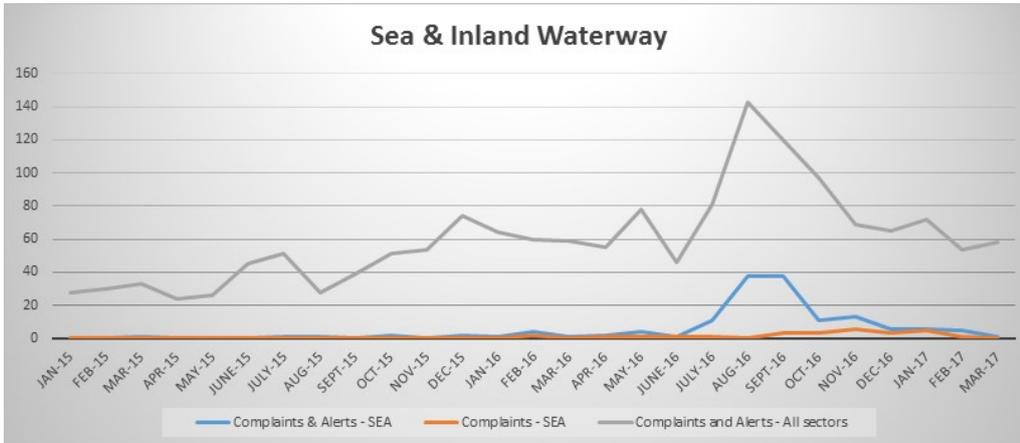


Chart 1 – Evolution of incoming complaints and alerts in sea and inland waterway transport

	2015	2016	2017 1 <sup>st</sup> quarter	Total
<b>Alerts</b>	7	109	7	123
<b>Complaints</b>	0	21	6	27
<b>Total</b>	7	130	13	150

In particular, the Authority received approximately 123 alerts and 27 complaints relating to sea and inland waterway services, which have highlighted a number of critical issues, as represented in the following charts:

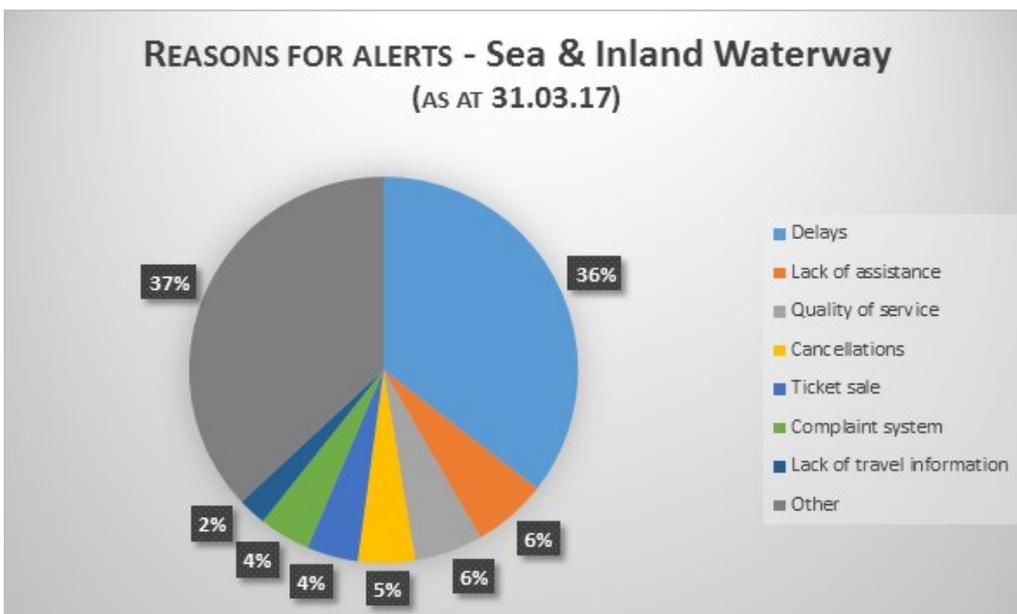


Chart 2 - Incoming alerts

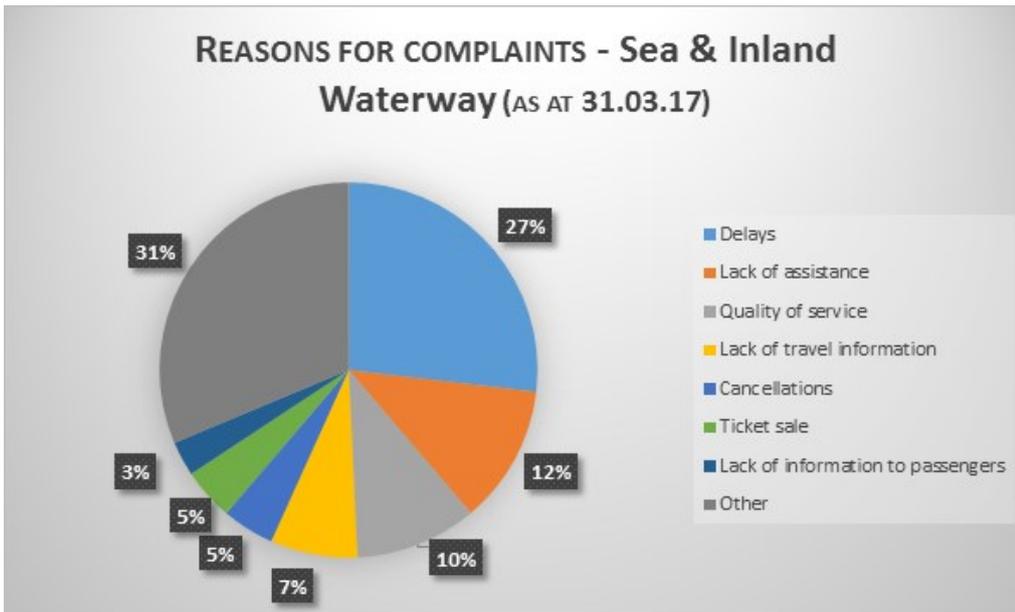


Chart 3 - Incoming complaints

"Other" includes alerts/complaints pertaining to multiple issues (application for refund, general information requests, lost or stolen luggage, new timetable, cabin comfort, 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 129/2015, 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 imposition of the penalties.

More frequent cases examined in the reference period concern the failure to disseminate timely and complete information to passengers by 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, and the infringement concerning the time-limits laid down by the Regulation to provide a final reply to first-instance complaints.

Initiation of penalty proceeding	Infringement of Regulation	Payment of reduced penalty	Amount of reduced penalty	Penalty measure	Penalty amount	Measure of dismissal	Ongoing inquiries
Decision No 9/2017	- art. 16 ( <i>"Information in the event of cancelled or delayed departures"</i> ), para. 1 - art.24 ( <i>"Complaints"</i> )	Decision No 59/2017	Euro 1,500.00				
Decision No 10/2017	- art.18 ( <i>"Re-routing and reimbursement in the event of cancelled or delayed departures"</i> ) - art. 24 (2) ( <i>"Complaints"</i> ) para. 2	Decision No 50/2017	Euro 3,500.00				
Decision No 19/2017	- art.18 ( <i>"Re-routing and reimbursement in the event of cancelled or delayed departures"</i> ) - art. 24 ( <i>"Complaints"</i> ) para. 2	Decision No 60/2017	Euro 3,500.00				
Decision No 45/2017	- art. 16 ( <i>"Information in the event of cancelled or delayed departures"</i> ), para. 1 - art.18 ( <i>"Re-routing and reimbursement in the event of cancelled or delayed departures"</i> ) - art. 24 ( <i>"Complaints"</i> ) para. 2						v
<b>Total</b>		<b>3</b>	<b>Euro 8,500.00</b>				<b>1</b>

Table 1- Infringements of users' rights in sea and inland waterway 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 can be applied 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.

The penalty proceedings already concluded are described here below in more detail.

By Decision No 9/2017 of 9 January 2017 the Authority initiated a proceeding for infringement of the following articles of the Regulation by the carrier concerned:

- art. 16 (1): according to this provision, in case of delay in departure passengers shall be informed no later than 30 minutes after the scheduled time of departure;
- art. 24 (2): according to this provision, 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 2 months from the receipt of a complaint.

By Decisions No 10/2017 of 9 January 2017 and No 19/2017 of 9 February 2017 the Authority initiated penalty proceedings to assess the infringement of the following articles of the Regulation:

- art. 18: pursuant to the provision, where a carrier reasonably expects a passenger service to be cancelled or delayed in departure from a port terminal for more than 90 minutes, the passenger shall immediately be offered the choice between rerouting or reimbursement of the ticket price;
- art. 24 (2) concerning the above-mentioned obligations with respect to the replies to complaints.

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

In 2016, the Authority has been a key player in the dissemination of the information concerning its functions and tasks as assigned by the legislator. In 2016 ART concluded the inquiries initiated at the beginning of the year on most of the major Italian companies carrying out passenger services by sea with respect to the compliance with the information obligations under art. 23 (1) of the Regulation.

*In particular, pursuant to article 23 (1) ("Information on passenger rights") of the Regulation "[c]arriers, terminal operators and, when applicable, port authorities, shall, within their respective areas of competence, ensure that information on the rights of passengers under this Regulation is publicly available on board ships, in ports, if possible, and in port terminals. The information shall be provided as far as possible in accessible formats and in the same languages as those in which information is generally made available to all passengers. When that information is provided particular attention shall be paid to the needs of disabled persons and persons with reduced mobility".*

The following paragraph 3 provides that "*[c]arriers, terminal operators and, when applicable, port authorities shall inform passengers in an appropriate manner on board ships, in ports, if possible, and in port terminals, of the contact details of the enforcement body designated by the Member State concerned pursuant to Article 25(1)".*

Beside checking the state of implementation of the Regulation by carriers, this inquiry activity contributed to make passengers aware of their rights and of the available tools, including the possibility to submit a complaint to the Authority. As mentioned above, this led to an increase in the number of users applying to the Authority, thus enabling ART to take the first important measures in sea and inland waterway transport.

It is worth mentioning that the activities undertaken by the Authority in sea and inland water transport also include the cooperation with EU National Enforcement Bodies (NEBS). In fact, where the complaints concerned journeys from ports situated in EU countries, pursuant to Article 25 (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.