

## **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 and amending Regulation (EC) No 2006/2004 (year 2021)**

### **1. Functions and responsibilities of the Authority as national enforcement body in charge of the enforcement of the rights of passengers when travelling by sea and inland waterway**

The Transport Regulation Authority (hereinafter: Authority), established under Article 37 of Decree-Law No 201 of 6 December 2011, as converted with amendments into Law No 214 of 22 December 2011, has been designated as the national enforcement body (NEB) in charge of the enforcement of Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway (hereinafter: Regulation)<sup>1</sup> pursuant to Legislative Decree No 129 of 29 July 2015<sup>2</sup>.

For the purpose of implementing article 25 ("*National enforcement bodies*") of the Regulation, by the above-mentioned Legislative Decree No 129/2015 the Authority was entrusted with the task of (i) carrying out monitoring and inquiries on sea and inland waterway transport; ii) inquiring into and assessing the complaints lodged by passengers, for the purpose of identifying infringements of the obligations set out in the Regulation, (iii) assessing infringements of the provisions of the Regulation and imposing penalties as provided for in the above-mentioned Legislative Decree.

In exercising its responsibilities, the Authority may, in particular, 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.

It should be noted that the Authority is tasked with verifying that the rights of passengers have been respected and with imposing sanctions on the company, as the case may be, while settling disputes between the parties or requiring the provision of compensation for damage do not fall within its remit<sup>3</sup>.

As provided for by Legislative Decree No 129/2015, by Decision No. 86/2015 the Authority adopted the rules on penalty proceedings for infringements of the provisions of the Regulation<sup>4</sup> (hereinafter: rules on penalty proceedings).

As required by Article 26 ("*Report on enforcement*") of the Regulation, this report illustrates the activity carried out by the Authority in its capacity as national enforcement body in the two years preceding the publication of the report, by describing in particular, the actions taken to enforce the provisions of the Regulation, and by providing statistical data relating to the complaints received and sanctions imposed in the period from 1 January 2019 to 30 April 2021<sup>5</sup>.

The sea and inland waterway passenger services that are covered by this report are as follows:

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<sup>1</sup> 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.

<sup>2</sup> Rules on penalties proceedings for infringements of the provisions of Regulation (EU) No 1177/2010, amending Regulation (EC) No 2006/2004 concerning the rights of passengers when travelling by sea and inland waterway.

<sup>3</sup> In this respect it is highlighted that by the above-mentioned Decree-Law 201/2011 the Authority is entrusted with the task of encouraging the establishment of simple and low-cost procedures for conciliation and dispute settlement between operators and users (article 37 (3) (h)).

<sup>4</sup> Rules on penalty proceedings for infringements of the provisions of Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway, as adopted by ART Decision No 86/2015 of 15 October 2015.

<sup>5</sup> Past reports on the activity carried out in 2015-2016 (including the first quarter of 2017) and 2017-2018 (including the first quarter of 2019) are available at the following link: <https://www.autorita-trasporti.it/trasporto-via-mare-e-per-vie-navigabili-interne/>.

- 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 that are precisely identified by the Regulation.

The 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.

Finally, pursuant to Article 3 (4) of Legislative Decree No 129/2015, whenever it is deemed necessary, the Authority may submit proposals to the Parliament and the Government to amend the Legislative Decree whereby it was designated as the enforcement body, including with reference to the extent of the sanctions to be imposed<sup>6</sup>.

## **2. Procedure to lodge a complaint with the Authority**

In accordance with the provisions of the aforementioned Legislative Decree No 129/2015, the Authority shall handle and assess the complaints lodged by passengers, in order to ascertain the infringements of the obligations provided for by the Regulation. Pursuant to Article 25 (3), second sentence, of the Regulation, national legislation has established that, 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 carrier or terminal operator<sup>7</sup>. The Regulation provides that such first-instance complaint shall be lodged within two months of the date on which the service was provided or should have been provided.

Only in case of an unsatisfactory response or in case of non-reaction, sixty days after the complaint has been submitted to the carrier or terminal operator, the passenger may appeal to the Authority in the second instance – including through representative associations, where expressly delegated to do so – to report breaches of the obligations set out in the Regulation. With regard to regional and local services, complaints may also be submitted to appropriate regional structures, as identified by a decree of the Minister of Infrastructure and Transport<sup>8</sup> (now Minister of sustainable infrastructures and mobility), that shall provide them to the Authority on a monthly basis.

In particular, for sea and inland waterway transport, the second-instance complaint shall be lodged with the Authority in one of the following ways:

- by using the appropriate online electronic tool for the submission of complaints (SiTe, with access from the Authority's webpage <https://www.autorita-trasporti.it/site/>), which does not require further transmission. The system allows, through a wizard, to lodge complaints directly on-line after

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<sup>6</sup> As illustrated in the previous report, on 5 December 2018 the Authority addressed to the Government and the Parliament a recommendation on "*Enforcement of passenger rights in rail, sea and inland waterway and bus and coach transport: sanctioning system*", containing proposals of amendments to the existing Legislative Decrees No 70/2014, No 129/2015 and No 169/2014, that implement in the Italian legal system the EU regulations concerning the rights of rail, sea, and bus passengers, respectively.

<sup>7</sup> In this regard, Carriers and terminal operators shall set up or have in place an accessible complaint-handling mechanism for rights and obligations covered by 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 2 months from the receipt of a complaint. (Article 24 of the Regulation).

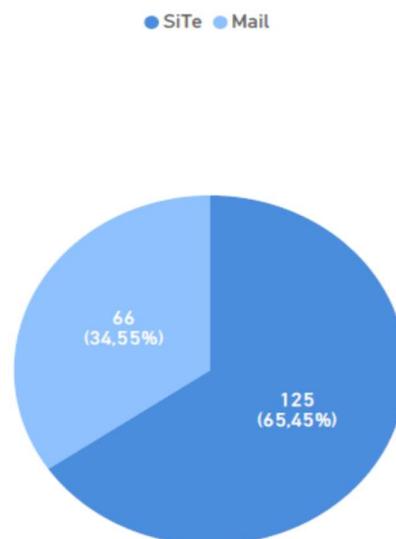
<sup>8</sup> Decree of the Minister of Infrastructure and Transport of 5 June 2017 on "*Identification of regional structures in charge of receiving complaints following the assessment of alleged infringements concerning sea and inland waterway transport of regional and local competence*".

- registration and release of login ID and password<sup>9</sup>. If the user completes the procedure by uploading all the required documents, the system allows the automatic dispatch to the Authority and the user can verify the registration of the complaint. The electronic tool is available in English as well;
- by filling out the form that is available also in English at [https://www.autorita-trasporti.it/wp-content/uploads/2021/07/Complaint-form\\_Sea.pdf](https://www.autorita-trasporti.it/wp-content/uploads/2021/07/Complaint-form_Sea.pdf), this shall be also sent, under penalty of inadmissibility, by registered letter with acknowledgement of receipt or by certified e-mail to the following address: [pec@pec.autorita-trasporti.it](mailto:pec@pec.autorita-trasporti.it), or by ordinary e-mail to: [art@autorita-trasporti.it](mailto:art@autorita-trasporti.it).<sup>10</sup>

It is worth noting that the SiTe tool simplifies the services rendered to users by the Authority; this method allows users to be guided through the correct completion of complaints, and to centralise their receipt, and enables to provide more effective responses, thanks to the availability of all the pieces of information that are useful for the examination of the complaint.

As shown in the following graph, concerning sea and inland waterway transport, 65.45 % of complaints were received through SiTe during the period under review, while 34.55% were submitted with a form sent by one of the other designated channels (overall indicated as “mail”).

**Figure 1 — Methods of receipt of complaints concerning sea and inland waterway transport in the period from 1 January 2019 to 30 April 2021**



Source: ART.

### **3. Alerts and complaints received**

Although the Regulation provides that, by 1 June 2015, and every two years following that date, the activity carried out in the previous two calendar years be reported, it is deemed useful to provide data concerning complaints and alerts (requests) consolidated to date, i.e., received from 1 January 2019 until the first quarter of 2021 (period of reference).

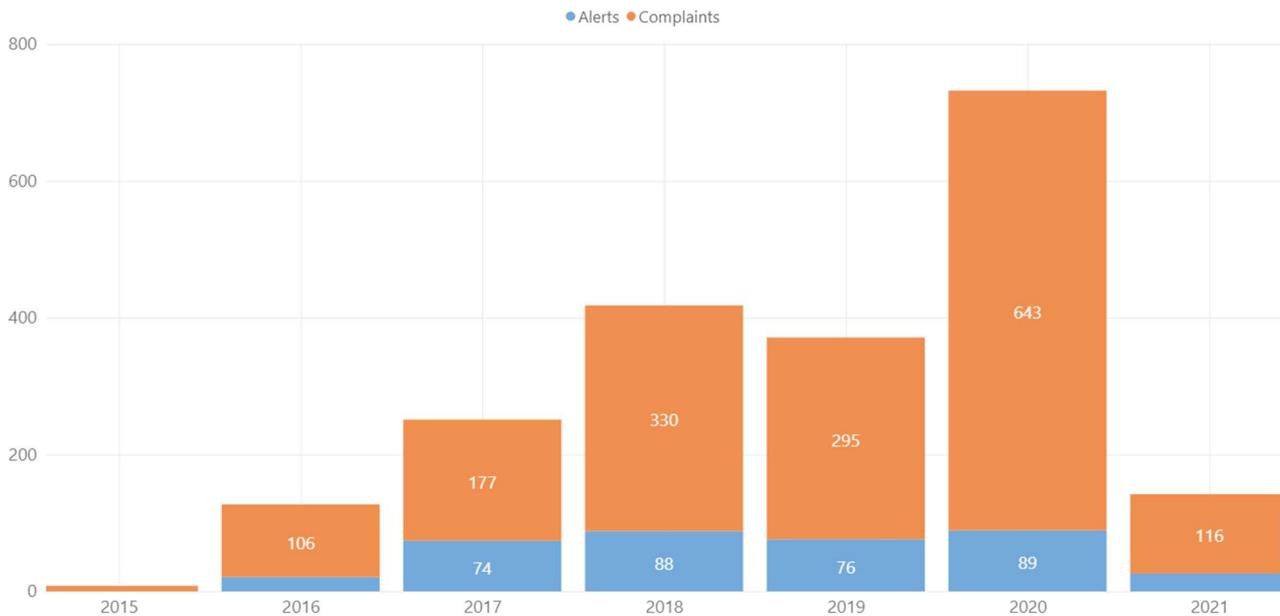
<sup>9</sup> As of 23 September 2020, the SiTe tool is accessible through the Public Digital Identity System (SPID) as well.

<sup>10</sup> The rules on sanctioning proceedings further provide for hand delivery to the Authority’s record office.

In this respect, it should be first of all clarified that alert means the request sent by the user which is not presented in the prescribed manner (e.g. submitted before the expiry of 60 days from the date the complaint was lodged to the carrier or including only a general description of the issue); on the other hand, the complaint is a request which is properly filed and includes the essential pieces of information for a thorough assessment of the case reported by the user.

As the body responsible for the enforcement of the Regulation, the Authority has received a number of complaints and alerts from sea passengers<sup>11</sup> that are further outlined in the bar chart and table in Figure 2<sup>12</sup>.

**Figure 2 — Number of complaints and alerts in sea transport from 1 January 2019 to 30 April 2021**



Type of request	2015	2016	2017	2018	2019	2020	2021 (April)	Total
<b>Alerts</b>	8	106	177	330	295	643	116	<b>1,675</b>
<b>Complaints</b>	0	21	74	88	76	89	26	<b>374</b>
<b>Total</b>	<b>0</b>	<b>127</b>	<b>251</b>	<b>418</b>	<b>371</b>	<b>732</b>	<b>142</b>	<b>2,049</b>

Source: ART.

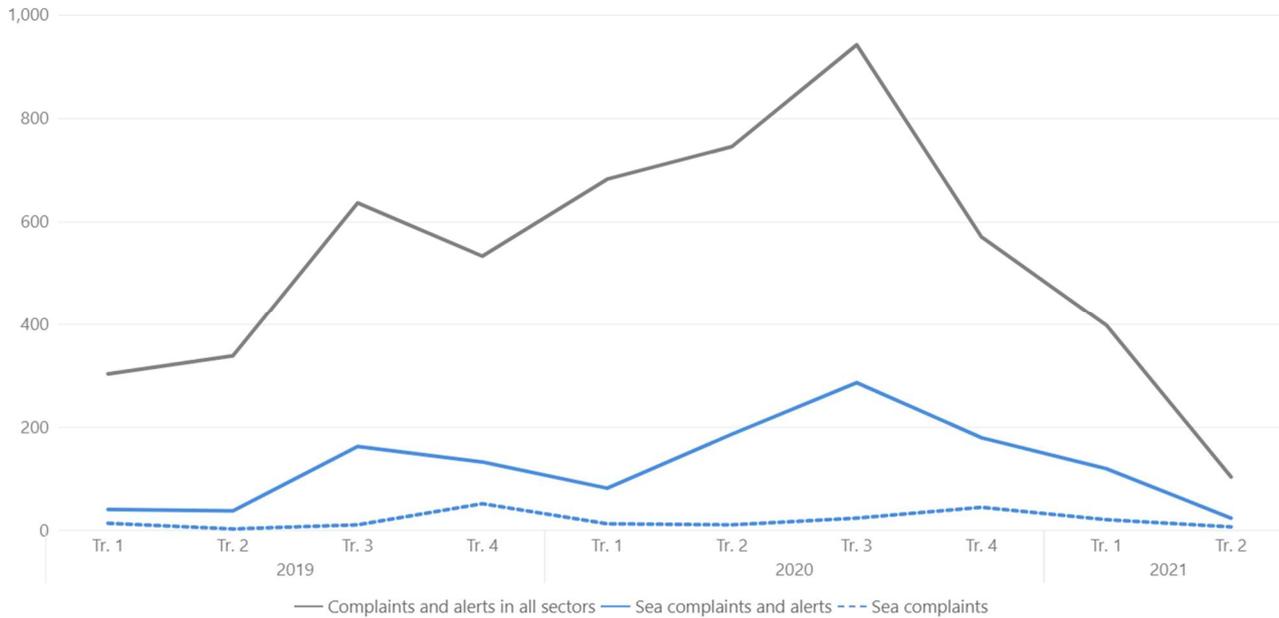
The development in the submission of the requests appears to be slightly declining in 2019 as compared to the previous year and again increasing in 2020.

On the other hand, the graph in Figure 3 shows the quarterly development in the complaints and alerts received by the Authority in the period of reference.

<sup>11</sup> No complaints or alerts have been received for inland waterway transport.

<sup>12</sup> Compared to the data in the tables included in the reports of the previous two-year periods, the minimal deviations are related to further refinement of data and/or reclassifications of requests (including following the transmission of additional documentation by the passenger).

**Figure 3 — Quarterly development in complaints and alerts concerning sea transport from 1 January 2019 to 30 April 2021**



Source: ART.

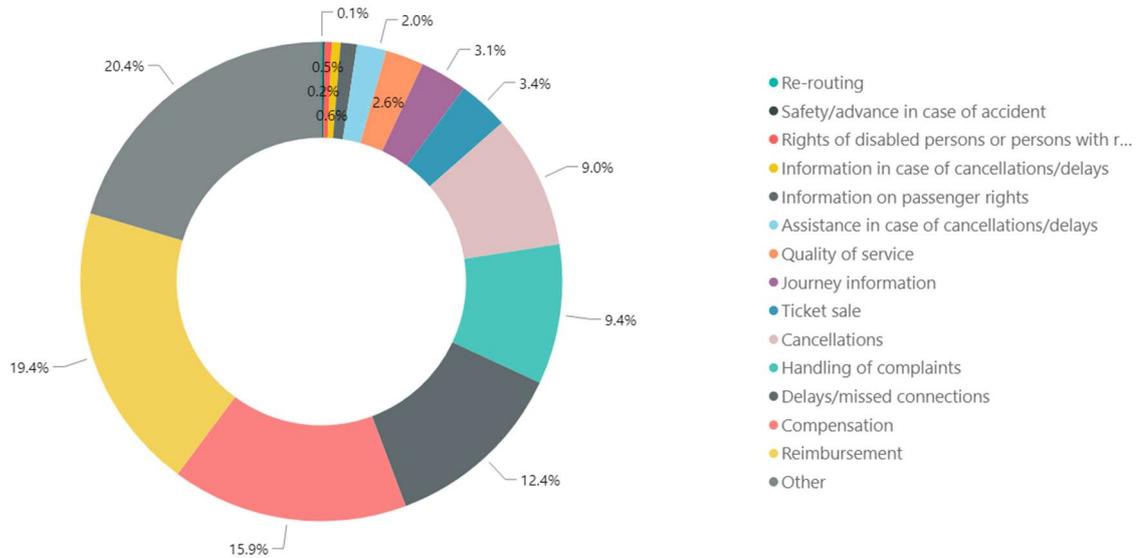
The above graph clearly shows both the peaks close to the summer periods 2019-2020 (third quarter), due to the strong seasonality in the development of complaints and alerts for this mode of transport, and an increase in the number of requests since the second quarter of 2020, that is also related to the effects of the epidemiological emergency, as further outlined below; the curve deflects in the following quarters.

The graph also allows for a comparison with the development of the requests received by the Authority for all sectors<sup>13</sup>. The percentage of complaints and alerts received for sea transport, out of the total number of complaints and alerts received, is 25.35 %.

In particular, in the period from 1 January 2019 to 30 April 2021, the Authority received 1,054 alerts and 191 complaints related to sea transport, which highlighted different criticalities, as shown in the graph in Figure 4.

<sup>13</sup> In this regard, in the light of the provisions of legislative decree No 70/2014 and legislative decree No 129/2015, the Authority is also identified as the monitoring and supervisory body for the correct enforcement of Regulation (EC) No 1371/2007 and Regulation (EU) No 181/2011, for the protection of the rights of rail and bus passengers, respectively.

**Figure 4 — Grounds of complaints and alerts concerning sea transport in the period 1 January 2019 - 30 April 2021**



Source: ART.

Whereas each complaint/alert may contain more than one ground, the graph in Figure 4 shows that the main categories of passenger requests are related to delays, cancellations, and associated issues. In particular, based on a thorough analysis of complaints and alerts, the most problematic issues are linked to:

- compensation related to ticket price or reimbursement following delays or cancellations and their modalities of payment;
- information in case of late cancellations or departures;
- assistance in case of cancelled or delayed departures;
- choice offered between rerouting or reimbursement in case of cancelled or delayed departures;
- accessibility of complaint submission system, timeliness and grounds for responses given, and effective solution provided to disruptions experienced by users.

In this respect, all the requests received are classified on the basis of the complaints from passengers, that are not always fully aware of the actually available rights and, therefore, the issues highlighted might not fall under those for which the Regulation provides specific protection.

“Other” includes alerts/complaints pertaining to multiple issues, which tend to be unrelated to the rights set out in the Regulation (requests for general information, claims for damages to cars in the ship’s hold, issues related to cabin comfort and/or cleaning, application of special offers, etc.).

The Authority may either consider the content of these requests for the exercise of the regulatory functions provided under the statutory law<sup>14</sup> or forward them to other administrations for issues falling under their

<sup>14</sup>In particular, Article 37 (2) of Legislative Decree 201/2011 provides under letter d) that the Authority lays down “the minimum quality standards of national and local transport services that are subject to public service obligations, as identified in accordance with the local characteristics of supply and demand” and under letter e) that the Authority defines “in relation to the different services and infrastructures, the minimum rights and entitlements, including compensation, that may be claimed by users from infrastructure managers and service providers, without prejudice to

remit (e.g., Competition Authority, with regard to any commercial practices, or entities awarding the relevant service for their checks on the correct execution of the public service contract).

#### **4. Reports and complaints received in the emergency period due to the COVID-19 pandemic**

With regard to alerts and complaints received by the Authority, as referred to in paragraph 3, the effects arising from the COVID-19 emergency, which inevitably impacted on the citizens' mobility, are worthy of specific attention: on the one hand, because of the perception of the risk of contagion, many passengers who had already concluded transport contracts, renounced travelling; on the other hand, transport companies have reshaped their offer and cancelled a number of services.

In the performance of its functions, the Authority has received, since the end of February 2020, several passenger requests concerning issues related to the reimbursement of unused travel tickets, both for renouncing travelling by passengers, and following cancellation of transport services on the initiative of the carrier or public authority, that was related to the epidemiological emergency.

In this context, the Authority has provided for the timely publication, on its website, of the interpretative guidelines adopted by the EU Commission on the application, in relation to the context of the COVID-19 epidemic, of certain provisions of the passenger rights regulations<sup>15</sup> and of the Recommendation of 13 May 2020<sup>16</sup>.

Specific news and updates have also been drafted and published on the Authority's website<sup>17</sup>, together with *frequently asked questions* (FAQ), to provide sea, bus and rail passengers with information concerning passenger rights in case of disruptions related to the Coronavirus emergency.

The graph in Figure 5 shows the impact of the health emergency on the requests filed by sea passengers.

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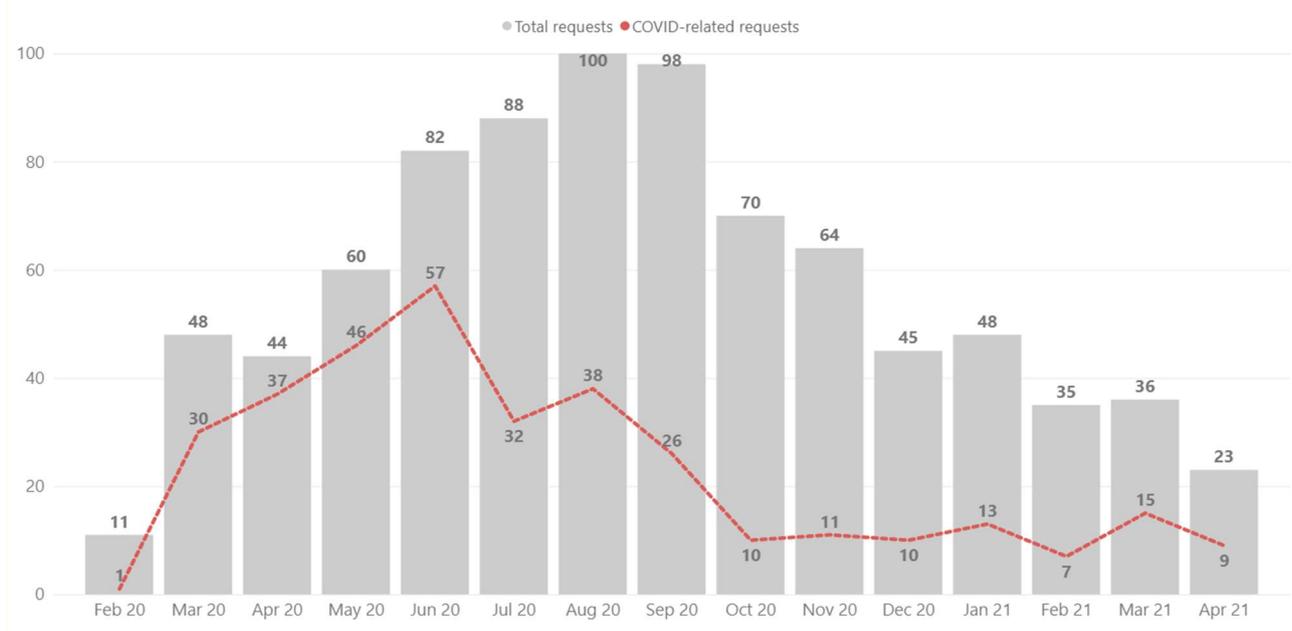
*the additional collaterals increasing users' protection which infrastructure managers and service providers may include in their service charters".*

<sup>15</sup> "Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with COVID-19", C(2020) 1830 final.

<sup>16</sup> Commission Recommendation (EU) 2020/648 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic.

<sup>17</sup> E.g. page <https://www.autorita-trasporti.it/notizie/treni-autobus-navi-tutela-dei-diritti-dei-passeggeri-a-fronte-di-cancellazioni-dei-servizi-di-trasporto-anche-con-le-nuove-misure-anti-covid-19/>

**Figure 5 — Development of complaints and alerts in the sea transport in the context of the COVID-19 pandemic (1 February 2020 - 30 April 2021)**



Source: ART.

The bar chart in Figure 5 shows an increase in the complaints and alerts received by the Authority in relation to the epidemiological emergency, especially in the months from April to June. In the following period, a slight drop may be observed in the requests related to the pandemic situation, while a further increase is noted in the complaints and alerts concerning other issues experienced by passengers during summer trips.

With regard to sea transport these requests concerned *inter alia*:

- a) requests for reimbursement of travel tickets for **renouncing travelling**, in relation to various reasons, including delays in the payment of reimbursements and modalities for the use of vouchers;
- b) requests for reimbursement of travel tickets for **cancellations by carriers**, in relation to various reasons, including modalities for the request for reimbursement, delays in the payment of reimbursements and related modalities.

Concerning passenger requests related to reimbursement of unused travel tickets, the Authority has repeatedly invited and called upon transport companies to behave consistently with the EU legislation on the enforcement of passenger rights, safeguarding their right to obtain, in case of cancellations of services on the carrier's initiative or by order of the competent authorities, a cash refund of the ticket price.

With a view to ensuring full enforcement of passenger rights, as they were particularly exposed during the health emergency, the Authority has taken steps with specific requests to transport companies, including in the case of alerts or requests for reimbursement for renouncing travelling, with a view to the actual resolution of the issues, even where EU legislation does not provide for specific passenger protection. Indeed, as the Commission reiterated in the above-mentioned interpretative guidelines, EU regulations on passenger rights provide for safeguards only in the event of cancellations of the journey by the carrier and not even in the event passengers renounce travelling.

### **5. Imposition of penalties**

With respect to the penalty system provided for by Legislative Decree No 129/2015, penalties for infringement of the Regulation are determined on the basis of the assessed infringement and are

proportionate not only to the seriousness and repetition of the infringement and to the actions taken to relieve or remove its effects, but also to the percentage ratio of the passengers that have been affected by the infringement to the number of transported passengers. 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 are in any case assessed in accordance with applicable law, including for the purpose of the imposition of penalties.

It should be noted that, pursuant to article 4 (5) of Legislative Decree No 129/2015, the amounts arising from the imposition of penalties are paid into a special fund, that is established in budget estimates of the Ministry of Infrastructure and Transport (now Ministry of Sustainable Infrastructure and Mobility) to finance projects for the benefit of consumers in the transport sector. In this regard, the Decree of the Minister of Infrastructure and Transport of 19 February 2019, which was adopted upon proposal of the Authority and in agreement with the State-Regions Conference, stipulates that these amounts shall be allocated to projects for the benefit of consumers, aiming at awareness and information campaigns on passenger rights, including through the cooperation of service operators and infrastructure managers concerned<sup>18</sup>.

In particular, the amounts resulting from the penalties applied to transport of national interest are allocated to the a.m. Ministry, while those arising from the penalties applied to public services of regional and local interest are allocated to each region in proportion to the penalties paid which are related to the respective territories<sup>19</sup>.

As for the quantification of the penalties, the Authority applies the "*Guidelines on the quantification of administrative fines*", as adopted by Decision No 49/2017, in order to ensure consistency, transparency and impartiality in the exercise of its power to impose penalties. These guidelines set out the criteria for their determination which have been notionally provided for by the legislator, taking into account the differences between the parameters provided for by Law No 689 of 24 November 1981 ("*Changes to the penalty system*"), which are applicable to the cases falling within the Authority's general powers to impose penalties, and the criteria for the quantification of penalties for infringement of passenger rights laid down by the legislative decrees implementing EU regulations concerning rail, bus and coach and sea and inland waterway transport.

The table below shows the sanctioning proceedings for infringement of the passenger rights enshrined in the Regulations, that were initiated and concluded in the period from 1 January 2019 to 30 April 2021 (all decisions referred to therein are available on the Authority's website), while the following graph in Figure 6 shows the disputes broken down by types of right concerned by proceeding.

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<sup>18</sup> Ministerial decree of 19 February 2019, "*Modalities of allocation of the amounts deriving from the payment of penalties for infringement of the provisions on passenger rights in rail, bus and coach and inland waterway transport*", published in the Official Journal, General Series, No. 83 of 8 April 2019.

<sup>19</sup> For the purpose of implementing the provisions of Article 3 (2) of the Ministerial Decree, the Authority has transmitted, within the deadline provided for therein (first quarter of each year), the summary tables of all the penalties imposed in the previous year, indicating to which Region the penalties imposed on regional and local public transport companies shall be referred to.

Initiation of proceeding	Contested infringement of provisions of Regulation	Decision on closure of sanctioning proceeding	Amount of reduced payment	Amount of imposed penalty /dismissal
Decision No 3/2019	Article 24 <i>"Complaints"</i> , paragraph 2	Decision No 45/2019	EUR 500.00	
Decision No 14/2019	Article 16 <i>"Information in the event of cancelled or delayed departures"</i> , paragraph 1	Decision No 82/2019 <sup>20</sup>	EUR 1,000.00	
	Article 17 <i>"Assistance in the event of cancelled or delayed departures"</i> , paragraph 1			EUR 257,400.00
	Article 18 <i>"Re-routing and reimbursement in the event of cancelled or delayed departures"</i> , paragraph 1		EUR 3,000.00	
Decision No 18/2019	Article 16 <i>"Information in the event of cancelled or delayed departures"</i> , paragraph 1	Decision No 87/2019 <sup>21</sup>	EUR 1,000.00	
	Article 17 <i>"Assistance in the event of cancelled or delayed departures"</i> , paragraph 1			EUR 62,720.00
	Article 18 <i>"Re-routing and reimbursement in the event of cancelled or delayed departures"</i> , paragraph 1		EUR 3,000.00	
Decision No 26/2019	Article 16 <i>"Information in the event of cancelled or delayed departures"</i> , paragraph 1	Decision No 99/2019 <sup>22</sup>	EUR 1,000.00	
	Article 17 <i>"Assistance in the event of cancelled or delayed departures"</i> , paragraph 1			EUR 28,950.00
	Article 18 <i>"Re-routing and reimbursement in the event of cancelled or delayed departures"</i> , paragraph 1		EUR 3,000.00	
Decision No 33/2019	Article 16 <i>"Information in the event of cancelled or delayed departures"</i> , paragraph 1	Decision No 101/2019 <sup>23</sup>		EUR 2,300.00
	Article 17 <i>"Assistance in the event of cancelled or delayed departures"</i> , paragraph 1			EUR 103,415.00

<sup>20</sup> The decision was appealed by the carrier with respect to the infringement of Article 17 (1) of the Regulation. The judgment is pending before the Piedmont Regional Administrative Court (TAR).

<sup>21</sup> The decision was appealed by the carrier with respect to the infringement of Article 17 (1) of the Regulation. The judgment is pending before the Piedmont TAR.

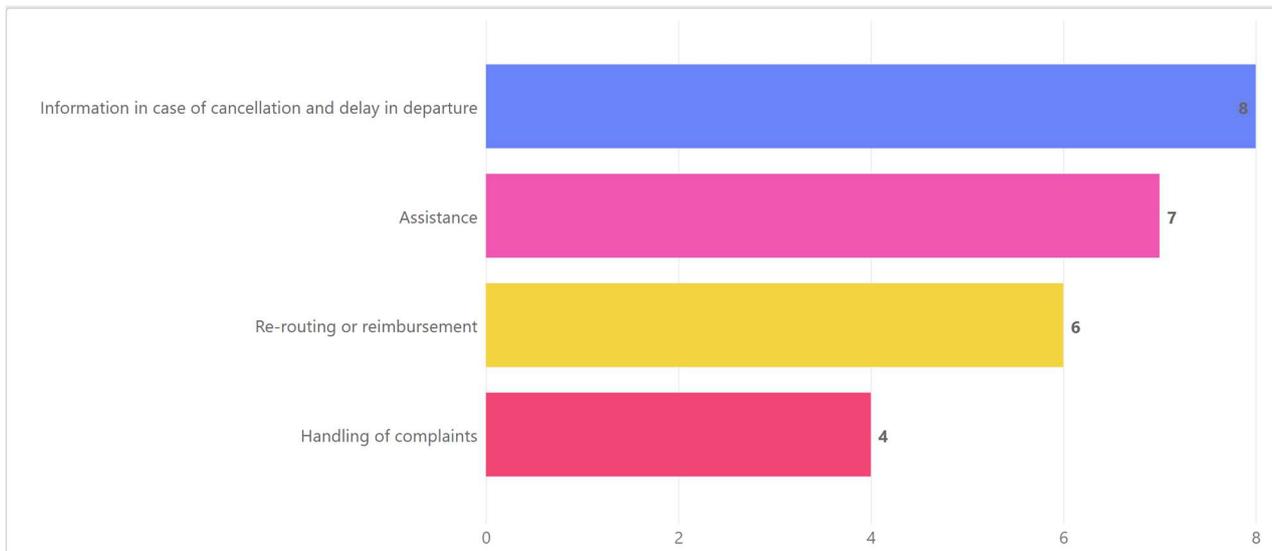
<sup>22</sup> The decision was appealed by the carrier with respect to the infringement of Article 17 (1) of the Regulation. The judgment is pending before the Piedmont TAR.

<sup>23</sup> The decision was appealed by the carrier with respect to the infringement of Articles 16 (1), 17 (1) and 18 (1) of the Regulation. The judgement upheld the Authority's position by ruling of the Piedmont Regional Administrative Court No 343/2021 of 26 March 2021. Currently, no appeal has been apparently lodged against this decision.

	Article 18 "Re-routing and reimbursement in the event of cancelled or delayed departures", paragraph 1			EUR 6,500.00
Decision No 104/2019	Article 16 "Information in the event of cancelled or delayed departures", paragraph 1	Decision No 5/2020 <sup>24</sup>	EUR 1,000.00	
	Article 17 "Assistance in the event of cancelled or delayed departures", paragraph 1			EUR 153,710.00
	Article 24 "Complaints", paragraph 2		EUR 1,000.00	
Decision No 123/2019	Article 16 "Information in the event of cancelled or delayed departures", paragraph 1	Decision No 142/2019	EUR 1,000.00	
	Article 24 "Complaints", paragraph 2		EUR 500.00	
Decision No 88/2019	Article 16 "Information in the event of cancelled or delayed departures", paragraph 1	Decision No 150/2020	EUR 1,000.00	
	Article 17 "Assistance in the event of cancelled or delayed departures", paragraph 1	Decision No 168/2020	Closure following commitments by the company	
	Article 18 "Re-routing and reimbursement in the event of cancelled or delayed departures", paragraph 1	Decision No 150/2020	EUR 3,000.00	
	Article 24 "Complaints", paragraph 2		EUR 500.00	
Decision No 104/2020	Article 16 "Information in the event of cancelled or delayed departures", paragraph 1	Decision No 151/2020	EUR 1,000.00	
	Article 17 "Assistance in the event of cancelled or delayed departures", paragraph 1	Decision No 169/2020	Closure following commitments by the company	
	Article 18 "Re-routing and reimbursement in the event of cancelled or delayed departures", paragraph 1	Decision No 151/2020	EUR 3,000.00	
<b>Total 9 initiated proceedings</b>	<b>Total 25 contested infringements</b>		<b>EUR 24,500.00</b>	<b>EUR 614,995.00</b>

<sup>24</sup> The decision was appealed by the carrier with respect to the infringement of Article 17 (2) of the Regulation (see footnote 28 below). Partially upholding the appeal, the Piedmont Regional Administrative Court redetermined the penalty.

**Figure 6 — Rights covered by sanctioning proceedings initiated and concluded in sea transport in the period from 1 January 2019 to 30 April 2021**



Source: ART.

As shown in the table and graph in Figure 6, and in line with past reports, most of the disputes against carriers<sup>25</sup> were related to passenger rights in the event of cancelled or delayed departures. Another issue, that has more than once initiated sanctioning proceedings, although to a lesser extent than in the previous period, is related to the handling of complaints.

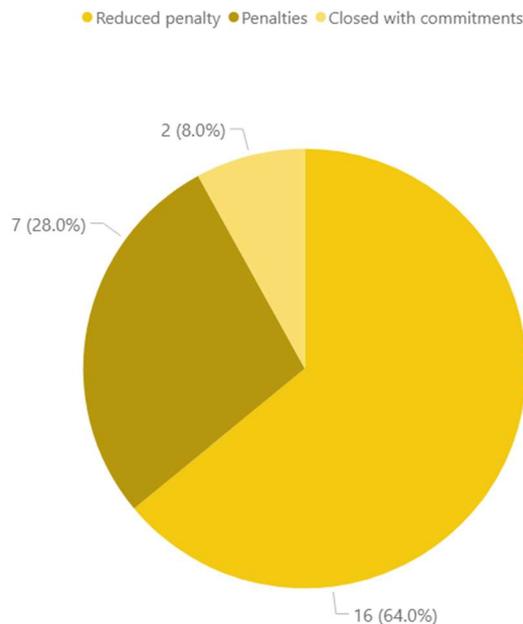
In particular:

- a) as regards Article 16, the infringements concerned the timeliness of the information provided to passengers, in relation to the time when the companies became aware of the delay in departure and the adequacy of the procedures to disseminate such information, which were considered not suitable to reach all passengers;
- b) in relation to Article 17, the sanctioned companies have not been able to prove they had offered material assistance free of charge (snacks, meals, refreshments), or to justify the failure to offer such assistance on the basis of the availability and reasonable possibility of providing passengers with comfort items, despite a delay of more than 90 minutes was reasonably foreseeable. One of the 7 proceedings initiated for infringement of the above Article refers to paragraph 2, as the carrier did not offer passengers overnight accommodation following the cancellation of the journey, resulting in departure on the following day;
- c) the disputes relating to Article 18 involved companies that, although they could reasonably foresee a cancellation or delay in departure of more than 90 minutes, did not prove they had offered passengers the choice between re-routing and reimbursement or offered such choice in an incomplete manner;
- d) finally, non-compliance with article 24 of the Regulation concerned in all cases the non-reaction or delayed reaction to first-instance passenger complaints (paragraph 2).

The pie chart in Figure 7 illustrates the outcome of the sanctioning activity related to the protection of passenger rights in sea transport carried out by the Authority in the period of reference.

<sup>25</sup> No disputes were raised in relation to terminal operators.

**Figure 7 — Outcome of proceedings initiated and concluded in sea transport in the period from 1 January 2019 to 30 April 2021**



Source: ART.

With regard to the outcome of the proceedings, a clear majority of the disputes was concluded with reduced payments, accounting for 64% of the total cases; in 28% of the disputes, the relevant proceeding was concluded with the imposition of a penalty onto the carrier, while in two cases, representing 8% of the total, the procedure was concluded with the approval of commitments by the company. The reduced payment, referred to in Article 16 of Law No 689/1981, allows the company that is subject to a sanctioning proceeding to terminate such proceeding, through the payment, within sixty days of the disputed infringement of an amount equal to one third of the maximum penalty provided for the infringement, or, if more favourable and where the minimum statutory penalty is fixed, equal to twice the amount thereof.

As regards the two disputes which were closed without ascertaining the infringement following the approval of the commitments submitted by the shipping company<sup>26</sup>, these are related to the infringement of Article 17 (1) of the Regulation. The company has committed, *inter alia*, to:

- a) implement a new procedure to assist passengers in the event of delay or cancellation: the new assistance procedure shall apply in all ports of embarkation, and shall be strictly regulated, eliminating “downtime” and imposing accountability on each company involved. In particular, this procedure will describe the modalities of communication between the ship command, the agent of the shipping company, the offices of the company and the local operators involved in the distribution activity. The distribution of snacks, meals and refreshments will take place upon presentation of a voucher by the passenger both ashore, through the local operators involved, and on board, for already embarked passengers, and will provide passengers with information and instructions on how,

<sup>26</sup> Proceedings initiated by Decision No 88/2020 of 23 April 2020, concluded by Decision No 168/2020 of 14 October 2020, and by Decision No 104/2020 of 4 June 2020, concluded by Decision No 169/2020 of 14 October 2020.

- when, and where to collect snacks, meals, or refreshments, both through posting and messages with loudspeakers, in Italian, Albanian and English. For on board distribution the shipping company will enter into an agreement with the company managing the catering service on board of all the ships operated by the shipping company;
- b) change its boarding card: the voucher distribution to passengers to obtain material assistance, presents a potential criticality, because, if the delay occurs at the time of embarkation or shortly before, all passengers have already completed their check-in operations. Therefore, the distribution of vouchers would be physically carried out at a time when the company has no more points of contact with passengers, thereby making assistance impossible, or at least significantly increasing its timing. In order to these difficulties, the current boarding card system will be modified, by inserting a counterfoil to the ticket, containing the requirements to collect the snack, meal, or refreshment both ashore, by designated staff, and, for passengers that are already on board at the time the assistance is provided, at the catering facilities on board;
  - c) in the port terminals of Ancona, Bari, and Durres, adopt *ad hoc* measures which are related to the characteristics of these ports.

In accordance with the Authority's regulations concerning the commitments made by the companies, the relevant proposal, following a preliminary and comprehensive assessment, has been entirely subject to public consultation so that third parties could comment thereupon. Following this consultation, the Authority confirmed its assessment of the actual suitability of the proposed commitments to address the critical issues underlying the contested infringement of Article 17 (1) of the Regulation, as they bring evidence of a structural organisational process, the implementation of which will make travel assistance procedures more effective. Consequently, the proposed commitments were approved and made mandatory for the shipping company, and the related sanctioning proceedings were closed without the assessment of the infringement.

Finally, with regard to the proceedings concluded with a reduced payment or with imposition of a penalty, the table below shows the number of infringements identified in relation to each of the aforementioned articles of the Regulation and the number of carriers addressed by the proceedings.

Article of Regulation	Number of initiated proceedings concluded* (as at 30 April 2021)	Number of companies involved
Article 16 (1)	8	3
Article 17 (1)	6	3
Article 17 (2)	1	1
Article 18 (1)	6	3
Article 24 (2)	4	2

\*Please note that a decision to initiate a sanctioning procedure may include several infringements.

Both the number of disputes and the number of carriers involved are decreasing as compared to the 2017-2019 period, while an increase may be observed in the total amount of the penalties imposed which are higher than those applied in the previous period. This is related to the specific sanctioning measure referred to in article 14 of Legislative Decree No 129/2015, which provides for an administrative fine ranging from EUR 100 to EUR 600 "for each passenger".

As regards this measure, by judgment No 788/2020 of 30 November 2020 concerning Decision No 5/2020<sup>27</sup>, the Piedmont Regional Administrative Court shared the effectiveness of the multiplier-passenger criterion as regulated by the Authority in the "Guidelines on the quantification of administrative fines", ruling that this is "in accordance with the spirit and letter of EU legislation, and respects the national transposition legislation concerning the supporting sanctioning system".

<sup>27</sup> The decision was appealed by the carrier before the Council of State.

On the point at issue, the Piedmont TAR has, in fact observed how this multiplying criterion appears to be consistent *“with the intentions of the EU legislator at the beginning of the Regulation whereby the “action by the Union in the field of maritime and inland waterway transport should aim, among other things, at ensuring a high level of protection for passengers” (recital 1) as “the weaker part[ies] to the transport contract” (recital 2). Therefore, the rationale of protection can only extend the scope of the provisions in question to encompass the entire passenger basin so as to ensure the high standard of protection pursued at EU level”*<sup>28</sup>.

The above-mentioned sanctioning activity carried out by the Authority has apparently produced, at least for some of the main companies addressed by sanctioning proceedings, a reduction in the number of second-instance complaints received by the Authority, presumably due to the adoption of remedial measures by the carriers.

## **6. Other initiatives**

### Information on passenger rights

As illustrated in the previous reports, for the purpose of better informing passengers on their rights, a dedicated section is available on the Authority’s website including EU and national legislation for users’ protection in rail, bus and sea and inland waterway transport. The section is available in English as well.

In this respect, with regard to the accessibility of its website, the Authority has recently implemented a fully automatic software solution powered by artificial intelligence (AI) that guarantees full accessibility to the Authority’s portal for a wide range of disabilities.

The software has been adopted in compliance with national and supranational legislation in accordance with the *Web Content Accessibility Guidelines* (WCAG 2.1), which define the criteria for web accessibility and set the standard for web accessibility legislation in all countries of the world.

Always with a view to providing users with immediate support concerning the rights established by the Regulation and with regard to the Authority’s role, the dedicated page including the FAQ section on passengers’ rights and the cases in which the Authority may be addressed is regularly updated. As described above, the information provided by the EU Commission (Interpretative Guidelines and Recommendation) on EU passenger rights in the context of the COVID-19 pandemic, including the relevant links, have also been made available on the same page.

In addition, the Authority is continuously monitoring the availability of information on passenger rights and on the modalities for submission of complaints on the carriers’ websites.

With reference to the regulatory *“Measures concerning the minimum rights that may be claimed by users of sea and inland waterway transport services against service providers and terminal operators with regard to the handling of complaints”*, adopted by Decision No 83/2019 of 8 July 2019, that is better outlined below, the Authority provides for publication on its website of the links to the relevant pages of the carriers’ and terminal operators’ websites including information on complaints procedures<sup>29</sup>.

Finally, the Authority has launched a communication campaign, in collaboration with the Prime Minister’s Office, with a focus on the enforcement of passenger rights, which will be implemented in 2021.

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<sup>28</sup> Based on these considerations, the TAR affirmed the principle that the application of this criterion should not be affected by the distinction between theoretically affected passengers and actually complaining passengers; therefore, the argument made by the sanctioned company, that the multiplier-passenger criterion pursuant to art. 14 of Legislative Decree No 129/2015 was to be referred not so much to the passengers that were theoretically and generally involved (809 in the case under review), but rather to the number of actually complaining passengers (five in the case under review) has been disregarded by the court.

<sup>29</sup> <https://www.autorita-trasporti.it/informazioni-e-link-utili-per-i-passeggeri/>

### Awareness-raising activities for carriers

In the framework of the activity carried out by the Authority for the enforcement of the Regulation, it is worth noting that, in continuity with previous periods, even where no conditions were found to contest infringements of the Regulation, the competent offices, on the basis of the complaints and alerts received, have implemented awareness- raising and reporting activities for carriers in order to encourage/support the improvement of caring policies.

In particular, a number of meetings were organised focusing on various critical issues arising from the analysis of the requests received and concerning, among other things: (i) procedures and timing for handling first-instance complaints; (ii) procedures and contents of the information provided in the event of delay or cancellation of the journey; (iii) offer between re-routing and reimbursement, and the obligation to provide ticket reimbursement in cash, if the passenger does not agree to receive a voucher.

### Handling of complaints

In the exercise of its regulatory powers, by Decision No 83/2019 of 8 July 2019, the Authority adopted, pursuant to Article 37 (2) (e) of Legislative Decree No 201/2012, the regulatory "*Measures concerning the minimum rights that may be claimed by users of sea and inland waterway transport services against service providers and terminal operators with regard to the handling of complaints*"<sup>30</sup>.

The first purpose of the measures is to ensure that users have adequate access to the complaint-handling system set up by service providers and terminal operators (Measure 3 "*Accessibility of complaint procedures*"). In particular, it is provided for: (i) the possibility for passengers, taking into account the frequent international nature of journeys, to use, in addition to Italian, the English language (and receive, in the latter case, a reply that is drafted in English); (ii) the availability of several channels to lodge the complaint including, at least, one electronic channel (via *website* with access from a link in the dedicated section or via e-mail, allowing in any case the receipt of simple e-mails) and one by registered post via a postal address or PO box<sup>31</sup>; (iii) the obligation to make available a printable complaint form in accordance with the templates annexed to the decision; (iv) the above is without prejudice to the possibility of lodging the complaint in any form, regardless of the use of the complaint form by the user (Measure 3.2), as the complaint shall be in any case examined if a minimum set of information is provided<sup>32</sup>.

As regards information obligations, service providers and terminal operators are required to provide users with adequate information on (i) channels available for the submission of complaints, (ii) languages that may be used, (iii) availability of a complaint form, including the modalities to obtain it, (iv) time limits (also specified under Measure 3.5) within which the complaint shall be sent by the user and the reply be provided by the service provider or terminal operator, and, lastly, (v) remedies that may be adopted by the user in the event of non-reaction to a complaint, without prejudice to the possibility for the user to carry out the judicial actions provided for by the law. In addition, users shall be also informed of the automatic compensation payable in the cases referred to in Measure 5.

With regard to the availability of the information, it is also provided for the obligation to set up a dedicated "Complaints" section on the website, on posters on board and in the general conditions of carriage, in addition to the service charter, where it is provided for its adoption, containing at least the information referred to under the previous point (Measure 3.4).

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<sup>30</sup> Following the procedure initiated by the Authority's Decision No 2/2019 of 19 January 2019, which was accounted for in the report on the previous two-year period.

<sup>31</sup> This provision is therefore aimed at guaranteeing the enforcement of rights also for non-internet users.

<sup>32</sup> Related to user identity, references of journey and contract of carriage (booking code or ticket number), description of the case that is assumed to infringe EU or national legislation, general conditions of carriage or of service charter, where it is provided for its adoption.

Specific protection is provided for users in case they establish relations with entities other than carriers or terminal operators: actually, if a user concludes the transport contract through intermediaries (ticket vendors, travel agents, tour operators), it is mandatory to indicate on the ticket the service provider with which a complaint may be lodged, and the website where the “Complaints” dedicated section may be consulted (Measure 3.6).

In addition, in order to ensure a thorough response by the companies to the requests filed by the user in the complaint, thus preventing generic or stereotype responses, a reinforced obligation to state reasons has been introduced: in particular, the obligation to indicate clearly (i) whether the complaint is accepted or rejected, (ii) timeframe and procedures for reimbursement or compensation, if any, (iii) measures and time limits, that may have been provided to solve the reported disruption and (iv) remedies that may be adopted by the user in the event of an unsatisfactory response (Measure 4).

In order to establish an effective complaint-handling system, it has been also established that complaints be registered in the systems of service providers and terminal operators according to specified criteria (Measure 6). Data registration and retention also enable to be acquainted with the specific circumstances that were detrimental to passenger rights, allowing service providers and terminal operators to undertake appropriate improvement actions aimed, *inter alia*, at reducing the total number of complaints.

A prominent feature of the regulatory measures at issue is the provision of the user’s right to receive automatic compensation, that is related to the price of the transport service, to the extent of at least 10% in the case of late response, which is given between the 61<sup>st</sup> and the 90<sup>th</sup> day as of receipt of the complaint; the automatic compensation is 20% of the price of the transport service if the response is given after the 90<sup>th</sup> day as of receipt of the complaint<sup>33</sup> (Measure 5).

### Cooperation between NEBs

Finally, it is worth mentioning that the activities carried out by the Authority in this sector include the cooperation with the *National Enforcement Bodies* (NEB) of other Member States, i.e., the bodies that are in charge of implementing the Regulation. Indeed, where the subject-matter of the complaints received was related to regular services departing from ports located in other Member States within the meaning of Article 25 (1) of the Regulation, in the period of reference the claim has been forwarded to the competent NEB (in particular, 17 claims were forwarded to NEBs in other Member States, and 12 were received from other NEBs with a request for their handling). On the other hand, in compliance with Article 27 (“*Cooperation between enforcement bodies*”) of the Regulation, information on the measures adopted by the authorities in charge of the enforcement of the Regulation was exchanged, where appropriate, within the framework of the meetings regularly convened by the Commission.

Further, in 2020 the Authority actively participated in the “*Evaluation*” process<sup>34</sup> that was launched by the EU Commission in 2019 – aimed at checking effectiveness (i.e. actual positive changes produced by the Regulation), relevance (whether the objectives are still in line with current needs), added value provided by the Regulation in relation to national and regional policies, as well as efficiency (benefit-cost ratio) — by providing, *inter alia*, the requested information on the basis of a questionnaire drafted by the consultancy company at the request of the EU Commission.

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<sup>33</sup> In any case, it is provided that below a minimum threshold of EUR 6.00 no compensation is payable; further, no compensation is acknowledged where a complaint does not include the essential information or is lodged in breach of the relevant deadlines; lastly, in order to avoid serial complaints and, in general, fraud to the detriment of service operators, compensation is excluded if the user has already been compensated for a claim relating to the same journey.

<sup>34</sup><https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11878-Sea-and-inland-waterway-transport-passengers-rights-evaluation-en>.