

Recommendation to the Parliament and the Government

Protection of passenger rights in rail, sea & inland waterway and coach & bus transport: rules on penalties

The ongoing changes in the transport sector, with a constant increase in the use of the different modes of transport, including combined, has enabled passengers to become more aware and sensitive about their right to enjoy efficient and quality services throughout the journey, be it mono- or multi-modal. This leads, *inter alia*, to their request for immediate, simple, and consistent protection, regardless of infrastructure and particular mode of transport used, or carrier providing the service. This need requires a reappraisal of once separate systems and regulations, with a view to a development also towards integrated, multimodal and even more user-oriented mobility, and, therefore, towards measures, including regulatory, which allow to strengthen the effectiveness of already existing protection of passenger rights, and to extend their scope to improve the overall quality of the passenger travel experience.

In this context, the EU Regulations on the protection of passengers' rights in rail transport (Regulation (EC) No 1371/2007), sea and inland waterway transport (Regulation (EU) No 1177/2010) and bus and coach transport (Regulation (EU) No 181/2011) entrust Member States with the determination of the sanctioning system applicable to infringements of the provisions laid down therein and the adoption of all necessary measures to ensure their effective application. In particular, these regulations provide that penalties shall be "*effective, proportionate and dissuasive*"¹.

In turn, the national implementing legislation² has conferred upon the Transport Regulation Authority (hereinafter: Authority), as the national body responsible for overseeing the correct application of the EU Regulations, the responsibility for establishing their infringement and imposing the penalties provided for under the implementing legislative decrees. In the implementation of national legislation, the Authority has regulated the proceedings for determination and imposition of penalties³ by means of its own rules of procedure.

¹ See Article 32 ("*Penalties*") of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations, Article 28 ("*Penalties*") 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 and Article 31 ("*Penalties*") of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.

² Legislative decree No 70 of 17 April 2014 on "*Rules on penalty proceedings for infringements of the provisions of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations*"; legislative decree No 129 of 29 July 2015 laying down "*Rules on penalty proceedings for infringements of the provisions of Regulation (EC) No 1177/2010 amending Regulation (EC) No 2006/2004, concerning the rights of passengers when travelling by sea and inland waterway*"; legislative decree No 169 of 4 November 2014 laying down "*Rules on penalty proceedings for infringements of the provisions of Regulation (EU) No 181/2011 amending Regulation (EC) No 2006/2004 concerning the rights of passengers in bus and coach transport*".

³ Rules on penalty proceedings for infringements of the provisions of Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations, adopted by Decision of the Authority No 52/2014 of 4 July 2014; rules on penalty proceedings for infringements of the provisions of Regulation (EU) no 181/2011 amending Regulation (EC) no 2006/2004, concerning the rights of passengers in bus and coach transport, adopted by Decision of the Authority No 4/2015 of 20 January 2015; rules on penalty proceedings for infringements of the provisions of Regulation (EC) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway, adopted by Decision of the Authority No 86/2015 of 15 October 2015.

The above decrees further set out that, whenever it is deemed necessary, the national enforcement body may submit proposals to the Parliament and the Government to amend them, including with regard to the level of the penalties imposed⁴.

Based on the foregoing, and in the light of the experience gained in the exercise of its functions as national enforcement body responsible for the application of the EU Regulations, the Authority has identified certain issues related to the national system of penalties in the three sectors falling under its remit (rail, bus & coach, and sea & inland waterway transport), which have led to proposals for amendments to the above-mentioned legislative decrees.

In this respect, the questions and ensuing proposals identified by the Authority are set out below under four areas:

1. rules on penalties for infringements of general rights provided for in EU Regulations;
2. rules on penalties for infringements of the rights of disabled persons or persons with reduced mobility;
3. further measures necessary to ensure the correct application of the EU Regulations;
4. coordination measure and final note.

For each of these areas, reference is made to the relevant regulations, with a description of the shortcomings or other issues identified in the application of the relevant provisions and of the ensuing proposals, together with some considerations regarding the level of the penalties.

The present recommendation is accompanied by draft legislative proposals (Annex 1) and a table comparing the current measures and those that would result from the adoption of the proposals (Annex 2).

1. Rules on penalties for infringements of general rights provided for in EU regulations

1.a 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

Assistance in case of delay

Article 18 (1) of Regulation (EC) No 1371/2007 ("*Assistance*") provides as follows:

"In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available".

Despite this provision, Article 15 ("*Penalties for failure to provide assistance to travellers*") of Legislative Decree No 70/2014 identifies only the railway undertaking as the addressee of the penalty for infringement of the above provision.

The disjunctive provision under Regulation (EC) No 1371/2007 with respect to the responsibility to inform passengers of any delay is, of course, aimed at ensuring effective protection, that the EU legislator intends to grant both if the failure to provide information is to be charged to the railway undertaking, and if it is instead be charged to the station manager.

⁴ Cf. Article 4 (3) of Legislative Decree No 70/2014, Article 3 (4) of Legislative Decree No 169/2014 and Article 3 (4) of Legislative Decree No 129/2015.

The importance of charging both parties with the information obligation at issue, that must be fulfilled (under their respective responsibilities) by ensuring adequate qualitative and quantitative levels of service, has become clear in the course of the inquiries carried out by the Authority in the exercise of its responsibilities⁵.

The analysis of complaints and alerts received from rail service users has shown that infringements of the obligation to provide information — which are particularly detrimental to passengers⁶ — may actually be charged not only to the railway undertaking but also, in many cases, to the station manager.

In view of the above, it is therefore considered appropriate to propose an amendment to Article 15 of Legislative Decree No 70/2014 by extending, in accordance with EU legislation, the penalty imposed on railway undertakings to station managers as well.

1.b Legislative Decree No 129 of 29 July 2015 laying down penalties 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

Right to compensation in the event of delay in arrival

Pursuant to Article 19 of Regulation (EU) No 1177/2010 (“*Compensation of the ticket price in the event of delay in arrival*”):

“1. Without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract. The minimum level of compensation shall be 25 % of the ticket price for a delay of at least:

(a) 1 hour in the case of a scheduled journey of up to 4 hours;

(b) 2 hours in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours;

(c) 3 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours; or

(d) 6 hours in the case of a scheduled journey of more than 24 hours.

If the delay exceeds double the time set out in points (a) to (d), the compensation shall be 50 % of the ticket price.

2. Passengers who hold a travel pass or a season ticket and who encounter recurrent delays in arrival during its period of validity may request adequate compensation in accordance with the carrier's compensation arrangements. These arrangements shall state the criteria for determining delay in arrival and for calculation of compensation.

3. Compensation shall be calculated in relation to the price which the passenger actually paid for the delayed passenger service.

4. Where the transport is for a return journey, compensation for delay in arrival on either the outward or the return leg shall be calculated in relation to half of the price paid for the transport by that passenger service.

5. The compensation shall be paid within 1 month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services, provided that the

⁵ E.g., in setting the minimum quality standards for national and local passenger transport services by rail, that are subject to public service obligations, pursuant to article 37 (2) (d) of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No. 214 of 22 December, referred to in Decision No 16/2018 of the Authority.

⁶ It should be noted that about 10 % of passenger requests concerning rail transport that are submitted to the Authority address the issue of the failure to provide information, 30% cancellations or delays, i.e., events in which timely and effective information is of crucial importance.

conditions are flexible, particularly regarding the period of validity and the destination. The compensation shall be paid in money at the request of the passenger.

6. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Carriers may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 6.”

However, Legislative Decree No 129/2015 does not lay down penalties to be imposed on carriers for infringements of the obligations referred to in Article 19 of Regulation (EU) No 1177/2010.

The provision of the right to compensation in the event of delay in arrival at the final destination is particularly important for passengers, as it is one of the few provisions enhancing the personal inconvenience suffered (in money or with vouchers).

At the same time, the analysis of complaints and alerts from maritime transport users showed that passenger complaints concerning infringements of the obligation at issue are particularly recurring⁷. Although on several occasions it was found that the carrier had not recognised or had only partially recognised the above-mentioned compensation, in the absence of a sanctioning measure, the Authority was unable to initiate a proceeding for the assessment of the infringement and had to dismiss the complaint⁸.

In this regard, a similar obligation is, in particular, laid down for rail transport⁹ under Article 17 (*“Compensation of the ticket price”*) of Regulation (EC) No 1371/2007; the infringement of this provision is sanctioned by Article 14 (*“Penalties for delays, missed connections and cancellations”*), paragraph 2 of Legislative Decree No 70/2014, as follows: *“For each individual event in respect of which the undertaking has failed to fulfil its obligations under Articles 15, 16 and 17 of the Regulation, as provided for in the event of delays, missed connections or cancellations, the railway undertaking shall be subject to the payment of an administrative fine ranging from EUR 2,000 to EUR 10,000”*. Article 14 (3) also provides for a penalty in the event of late payment of the compensation on the following terms: *“For each single delay in the payment of the reimbursement and compensation provided for in Articles 16 and 17 of the Regulation which exceeds by three times the period of one month after the submission of the request provided for in Article 17 (2) of the Regulation, the railway undertaking shall be subject to the payment of an administrative fine ranging from EUR 150 to EUR 500”*.

Also in view of the desirable consistency of the sanctioning systems relating to passenger rights in the different modes, the above-mentioned regulatory gap should be filled by providing for maritime transport,

⁷ In fact, more than 67 % of the passengers’ requests submitted to the Authority address issues related to delays, cancellations, reimbursements, and compensation.

⁸ Cf. e.g., Authority’s Decisions No 37/2018 and No 75/2018.

⁹ As regards bus and coach transport, compensation for delay in arrival is not provided for by the relevant Regulation. For the sake of completeness, with regard to air transport, Legislative Decree No 69 of 27 January 2006 (*Sanctioning measures for infringement of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights*), in the event of failure to compensate passengers for flight cancellations, provides for administrative fines ranging from EUR 10,000 to EUR 50,000 (Article 4 of Legislative Decree 69/2006). As regards compensation in the event of long delay in arrival, although Article 5 of Regulation (EC) No 261/2004 refers only to cancellations, the Court of Justice (Joined Cases C-402/07 and C-432/07 *Sturgeon et alia*) ruled that passengers affected by delays may suffer similar damage as passengers whose flight has been cancelled, i.e. a certain loss of time. According to the principle of equal treatment, passengers arriving at their final destination with a delay of three hours or more are entitled to the same compensation (Article 7) as passengers whose flights have been cancelled (Interpretative Guidelines on Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97 as amended by Regulation (EC) No 889/2002, paragraph 4.4.6).

too, penalties for failure to pay compensation in breach of Article 19 of Regulation (EU) No 1177/2010, as well as for late payment thereof.

With regard to the level of these penalties, it could be considered that in rail transport the range prescribed by the law pursuant to Article 14 (2) of Legislative Decree No 70/2014 for failure to comply with the above-mentioned reimbursement obligation (Article 17 of Regulation (EC) No 1371/2007) is the same provided for failure to comply with the obligation under Article 16 of Regulation (EC) No 1371/2007 to offer re-routing or reimbursement in case of cancelled or delayed departures.

The latter obligation is laid down for maritime transport, too, under Article 18 (*“Re-routing and reimbursement in the event of cancelled or delayed departures”*) of Regulation (EU) No 1177/2010 and for its infringement Legislative Decree No 129/2015 provides for penalties ranging from EUR 1,500 to EUR 15,000 (Article 12, *“Obligation of re-routing or reimbursement”*).

In consideration of the above, a specific sanctioning measure should be introduced in Legislative Decree No 129/2015.

1.c Legislative Decree No 169 of 4 November 2014 on penalties for infringements of the provisions of Regulation (EU) No 181/2011 amending Regulation (EC) No 2006/2004 concerning the rights of passengers in bus and coach transport

Continuation, re-routing and reimbursement

Pursuant to Article 19 (*“Continuation, re-routing and reimbursement”*) of Regulation (EU) No 181/2011:

“1. Where a carrier reasonably expects a regular service to be cancelled or delayed in departure from a terminal for more than 120 minutes or in the case of overbooking, the passenger shall immediately be offered the choice between:

- (a) continuation or re-routing to the final destination, at no additional cost and under comparable conditions, as set out in the transport contract, at the earliest opportunity;*
- (b) reimbursement of the ticket price, and, where relevant, a return service by bus or coach free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity.*

2. If the carrier fails to offer the passenger the choice referred to in paragraph 1, the passenger shall have the right to compensation amounting to 50 % of the ticket price, in addition to the reimbursement referred to in point (b) of paragraph 1. This sum shall be paid by the carrier within 1 month after the submission of the request for compensation.

3. Where the bus or coach becomes inoperable during the journey, the carrier shall provide either the continuation of the service with another vehicle from the location of the inoperable vehicle, or transport from the location of the inoperable vehicle to a suitable waiting point or terminal from where continuation of the journey becomes possible.

4. Where a regular service is cancelled or delayed in departure from a bus stop for more than 120 minutes, passengers shall have the right to the continuation or re-routing or reimbursement of the ticket price from the carrier, as referred to in paragraph 1.

5. The payment of reimbursement provided for in point (b) of paragraph 1 and paragraph 4 shall be made within 14 days after the offer has been made or request has been received. The payment shall cover the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation

to the passenger's original travel plan. In case of travel passes or season tickets the payment shall be equal to its proportional part of the full cost of the pass or ticket. The reimbursement shall be paid in money, unless the passenger accepts another form of reimbursement."

Article 13 ("*Continuation, re-routing and reimbursement*"), paragraph 1 of Legislative Decree No 169/2014 provides for an administrative fine for the carrier's infringement of one of the obligations laid down in Article 19 (1) and (2) of the Regulation, and, in paragraph 2, for an administrative fine for the carrier's infringement of the obligations laid down in Article 19 (3) and (4).

Unlike other modes, for the infringement of Article 19 (5) of Regulation (EU) No 181/2011, Article 13 of Legislative Decree No 169/2014 does not impose any penalty on the carrier for delayed payment of the reimbursement that may be chosen by the passenger as an alternative to continuation or re-routing, in the event of cancellation, delay in departure of more than 120 minutes or overbooking.

A similar obligation is laid down for rail transport under the above-mentioned Article 16 ("*Reimbursement and re-routing*") of Regulation (EC) No 1371/2007 and the penalties for its infringement, as described above, are imposed not only in the event of failure to pay the reimbursement¹⁰, but also, with an *ad hoc* penalty, in the event of late payment of the reimbursement¹¹.

In order to ensure more complete protection for users of bus and coach services which, as is apparent from the fact-finding survey published on 24 March 2017 on the Authority's website ("*Report on the outcome of the fact-finding survey on the analysis of regulatory issues concerning the market for medium- and long-distance open-access bus transport services*"), are experiencing a steady growth of market and competition between undertakings, and on account of the desirability to ensure the consistency of the sanctioning systems relating to passenger rights in the various modes, a specific penalty should be provided for bus and coach transport, too, to be related to the delay in the payment of the reimbursement that may be opted for by passengers — as an alternative to continuation or re-routing — in the event of cancellation, delay in departure of more than 120 minutes or overbooking.

Information in case of cancellation or delay in departure

Article 20 ("*Information*") of Regulation (EU) No 181/2011 provides that:

- "1. In the event of cancellation or delay in departure of a regular service, passengers departing from terminals shall be informed by the carrier or, where appropriate, the terminal managing body, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available.*
- 2. If passengers miss, according to the timetable, a connecting service due to a cancellation or delay, the carrier or, where appropriate, the terminal managing body, shall make reasonable efforts to inform the passengers concerned of alternative connections.*

¹⁰ With an administrative fine ranging from EUR 2,000 to EUR 10,000 (Article 14 (2) of Legislative Decree No 70/2014).

¹¹ With an administrative fine ranging from EUR 150 to EUR 500 for each individual delayed payment exceeding three times the time limit of one month as of submission of the relevant application provided for in Article 17 (2) of the Regulation (Article 14 (3) of Legislative Decree No 70/2014).

3. *The carrier or, where appropriate, the terminal managing body, shall ensure that disabled persons and persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.*

4. *Where feasible, the information required under paragraphs 1 and 2 shall be provided by electronic means to all passengers, including those departing from bus stops, within the time-limit stipulated in paragraph 1, if the passenger has requested this and has provided the necessary contact details to the carrier.”*

Article 14 (1) of Legislative Decree No 169/2014 (“*Information on cancellations and delays*”) provides for an administrative fine for the carrier’s infringement of the information obligation laid down in Article 20 (1) of the Regulation, as well as of the obligation to ensure that disabled persons or persons with reduced mobility receive the necessary information referred to in Article 20 (1).

On the other hand, no penalty is imposed on the carrier or terminal managing body for infringement of paragraph 2 of that article.

In this respect, worth mentioning is Legislative Decree No 129/2015, concerning transport by sea and inland waterway, that, in relation to infringements of passenger information obligations resulting in missed connection, as compared to a similar measure as that at issue¹², lays down penalties for the infringement of each of the reporting and information obligations laid down therein¹³.

Even in bus and coach transport, in the event of disruptions, such as cancellations or delays in departure, the provision of information is particularly important, especially to enable passengers to reschedule their journeys, as evidenced by the outcome of the analysis of users’ complaints and alerts received by the Authority.

Therefore, in order to ensure more complete protection for users of bus and coach transport services and because it would be advisable, as already highlighted, to provide for consistency of the sanctioning systems relating to passenger rights in the different modes, the above regulatory gap should be filled by extending the penalty system provided for in Article 14 of Legislative Decree No 169/2014 to the infringement of all the obligations laid down in Article 20 of Regulation (EU) No 181/2011.

2. Rules on penalties for infringement of the rights of disabled persons or persons with reduced mobility

Regarding the protection of the rights of disabled passengers or passengers with reduced mobility, to provide these users with access to rail, sea & inland waterway and bus & coach transport services “*under comparable conditions as those for other citizens*”, Regulations (EC) No 1371/2007, (EU) No 1177/2010 and (EU) No 181/2011 deal at length with specific rules on non-discrimination and assistance during the journey.

The examination of the legislative decrees, in particular concerning transport by sea and inland waterway (Legislative Decree No 129/2015) and bus and coach transport (Legislative Decree No 169/2014), highlights

¹² Article 16 “*Information in the event of cancelled or delayed departures*”, paragraph (2) of Regulation (EU) No 1177/2010: “*If passengers miss a connecting transport service due to a cancellation or delay, the carrier and, where appropriate, the terminal operator shall make reasonable efforts to inform the passengers concerned of alternative connections.*”

¹³ Article 13 of Legislative Decree No 129/2015: “*1. The carrier or terminal managing body that infringes one of the information and communication obligations laid down in Article 16 of the Regulation shall be subject to an administrative fine ranging from EUR 500 and EUR 5,000 for any cancellation or delay.*”

that there are cases in which, vis-à-vis specific rights guaranteed by EU law, the national implementing legislation does not provide for corresponding penalties.

Although no specific infringements concerning the above cases were reported in the context of the complaints and alerts received by the Authority, given the importance of the issues under consideration, it is considered appropriate to highlight the relevant weaknesses and make proposals for a better and more complete protection of the right to transport of disabled persons or persons with reduced mobility.

It should be pointed out, *inter alia*, that the question of the accessibility for persons with disabilities or persons with reduced mobility is one of the key issues in the exercise of the Authority's responsibilities.

In this respect, as regards sea and bus transport, which will be specifically examined below, the following measures may be mentioned:

- the regulatory act laying down "*Minimum quality requirements for national and local passenger transport services by sea, that are subject to public service obligations, pursuant to Article 37 (2) (d) of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No 214 of 22 December 2011*", annexed to the Authority's Decision No 96/2018 of 4 October 2018;
- the regulatory act laying down "*Measures to ensure equitable and non-discriminatory access to bus terminals to meet the passengers' mobility needs through intermodal and intramodal service connection*", annexed to the Authority's Decision No 56/2018 of 30 May 2018.

2.a Legislative Decree No 129 of 29 July 2015 laying down penalties 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

Exceptions and special conditions

Article 8 ("*Exceptions and special conditions*") of Regulation (EU) No 1177/2010 provides as follows:

"1. By way of derogation from Article 7(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to embark a disabled person or person with reduced mobility:

(a) in order to meet applicable safety requirements established by international, Union or national law or in order to meet safety requirements established by the competent authorities;

(b) where the design of the passenger ship or port infrastructure and equipment, including port terminals, makes it impossible to carry out the embarkation, disembarkation or carriage of the said person in a safe or operationally feasible manner.

2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall make all reasonable efforts to propose to the person concerned an acceptable alternative transport on a passenger service or a cruise operated by the carrier.

3. Where a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements referred to in Article 11(2), is nonetheless denied embarkation on the basis of this Regulation, that person, and any accompanying person referred to in paragraph 4 of this Article, shall be offered the choice between the right to reimbursement and re-routing as provided for in Annex I. The right to the option of a return journey or re-routing shall be conditional upon all safety requirements being met.

4. *Where strictly necessary and under the same conditions set out in paragraph 1, carriers, travel agents and tour operators may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility. As regards passenger services, such an accompanying person shall be carried free of charge.*

5. *When carriers, travel agents and tour operators have recourse to paragraphs 1 or 4, they shall immediately inform the disabled person or person with reduced mobility of the specific reasons therefor. On request, those reasons shall be notified to the disabled person or person with reduced mobility in writing, no later than five working days after the request. In the event of refusal according to paragraph 1(a), reference shall be made to the applicable safety requirements."*

Article 7 of Legislative Decree No 129/2015 ("*Right to transport*") provides for penalties to be imposed on carriers, travel agents or tour operators that, except for permitted reasons, refuse to accept a reservation, to issue or otherwise provide a ticket or to embark persons on the grounds of disability or of reduced mobility, as well as for infringements of the provisions under paragraph 4 of that article.

On the other hand, no penalty is provided if such persons, having refused the embarkation to the disabled person or to the person with reduced mobility, do not offer them and any accompanying person the choice between the right to reimbursement and re-routing (subject to compliance with all safety requirements), in breach of the obligation laid down in Article 8 (3) of Regulation (EU) No 1177/2010¹⁴.

With a view to ensuring effective right to transport of disabled persons or persons with reduced mobility, specific penalties should therefore be introduced for the cases at issue.

Quality standards for assistance

Pursuant to Article 13 ("*Quality standards for assistance*") of Regulation (EU) No 1177/2010:

"1. Terminal operators and carriers operating port terminals or passenger services with a total of more than 100 000 commercial passenger movements during the previous calendar year shall, within their respective areas of competence, set quality standards for the assistance specified in Annexes II and III and shall, where appropriate through their organisations, determine resource requirements for meeting those standards, in cooperation with organisations representative of disabled persons or persons with reduced mobility.

2. In setting quality standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the IMO's Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs.

¹⁴ For the sake of completeness, with respect to air transport, Legislative Decree No 24 of 24 February 2009, laying down "*Rules on penalties for infringement of the provisions of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air*", provides for a special penalty for cases in which, having refused boarding of a disabled person or person with reduced mobility due to one of the reasons for derogation permitted by Article 4 of Regulation (EC) No 1107/2006, air carriers, their agents or tour operators do not reimburse the ticket or offer re-routing also to any accompanying person (Article 4 (2) of Legislative Decree No 24/2009).

3. *The quality standards provided for in paragraph 1 shall be made publicly available by terminal operators and carriers physically or on the Internet in accessible formats and in the same languages as those in which information is generally made available to all passengers.”*

Legislative Decree No 129/2015 does not provide for any penalties for terminal operators and carriers in the event of a breach of the obligations referred to in Article 13 of Regulation (EU) No 1177/2010.

The provision at issue, which imposes on terminal operators and carriers the obligation to set quality standards for assistance in their respective areas of competence and make them publicly available in accessible formats, as it is necessary for ensuring access to transport under non-discriminatory conditions for all passengers, should be assisted by an appropriate sanctioning system¹⁵.

In this respect, it could be considered that, for the infringement of the separate obligations imposed on carriers and terminal operators¹⁶, to establish or have in place non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility and make them publicly available, Article 9 (“*Accessibility and information*”)¹⁷ of Legislative Decree No 129/2015 provides for administrative fines ranging from EUR 1,500 to EUR 15,000 and from EUR 500 to EUR 5,000, respectively.

2.b Legislative Decree No 169 of 4 November 2014 on penalties for infringements 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

Exceptions and special conditions

Article 10 (“*Exceptions and special conditions*”) of Regulation (EU) No 181/2011 provides as follows:

¹⁵ For the sake of completeness, it should be noted that, in the case of air transport, a special penalty (ranging from EUR 2,500 to EUR 10,000) is provided for infringement of the obligation to set and make publicly available the quality standards for assistance of the airport managing body, with the exception of commercial airports with annual passenger transit of less than 150,000: Article 7 (“*Lack of assistance by the airport managing body and quality standards*”), paragraph 2 of Legislative Decree No 24/2009 (under which “[u]nless the act constitutes a criminal offence, the airport managing body that does not set and make publicly available the quality standards for assistance referred to in Annex 1 to this decree, with the exception of commercial airports with annual passenger transit of less than one hundred and fifty thousand passengers”, shall be subject to an administrative fine ranging from EUR 2,500 to EUR 10,000).

¹⁶ These obligations are laid down in Article 9 (1) and (2) of Regulation (EU) No 1177/2010:

“1. *In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal operators shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility and accompanying persons. The access conditions shall upon request be communicated to national enforcement bodies.*

2. *The access conditions provided for in paragraph 1 shall be made publicly available by carriers and terminal operators physically or on the Internet, in accessible formats on request, and in the same languages as those in which information is generally made available to all passengers. Particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.”*

¹⁷ “1. *Carriers or terminal operators that do not establish or have in place, in cooperation with the organisations referred to in Article 9 (1) of the Regulation, non-discriminatory access conditions for the transport of disabled persons or persons with reduced mobility shall be subject to an administrative fine ranging from EUR 1,500 to EUR 15,000.*

2. *Carriers, terminal operators or tour operators that do not make the information referred to in Article 9 (2) and (3) of the Regulation publicly available shall be subject to an administrative fine ranging from EUR 500 to EUR 5,000.*

3. *Carriers, travel agents or tour operators that do not make available travel information, transport conditions, in appropriate and accessible formats for disabled persons or persons with reduced mobility in breach of Article 9 (4) of the Regulation, shall be subject to an administrative fine ranging from between EUR 150 to EUR 1,500”.*

“1. Notwithstanding Article 9(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility:

(a) in order to meet applicable safety requirements established by international, Union or national law, or in order to meet health and safety requirements established by the competent authorities;
(b) where the design of the vehicle or the infrastructure, including bus stops and terminals, makes it physically impossible to take on board, alight or carry the disabled person or person with reduced mobility in a safe and operationally feasible manner.

2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall inform the person concerned about any acceptable alternative service operated by the carrier.

3. If a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements of point (a) of Article 14(1), is nonetheless refused permission to board on the grounds of his disability or reduced mobility, that person and any accompanying person pursuant to paragraph 4 of this Article shall be offered the choice between:

(a) the right to reimbursement, and where relevant a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity; and
(b) except where not feasible, continuation of the journey or re-routing by reasonable alternative transport services to the place of destination set out in the transport contract.

The right to reimbursement of the money paid for the ticket shall not be affected by the failure to notify in accordance with point (a) of Article 14(1).

4. If a carrier, travel agent or tour operator refuses to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board, a person on the grounds of disability or of reduced mobility for the reasons set out in paragraph 1, that person may request to be accompanied by another person of his own choosing who is capable of providing the assistance required by the disabled person or person with reduced mobility in order that the reasons set out in paragraph 1 no longer apply.

Such an accompanying person shall be transported free of charge and, where feasible, seated next to the disabled person or person with reduced mobility.

5. When carriers, travel agents or tour operators have recourse to paragraph 1, they shall immediately inform the disabled person or person with reduced mobility of the reasons therefor, and, upon request, inform the person in question in writing within 5 working days of the request.”

Article 8 (“*Right to transport*”) of Legislative Decree 169/2014 sets out penalties for infringements of the provisions of the above-mentioned Article of the Regulation, to be imposed on carriers, travel agents or tour operators that, except for permitted reasons, refuse to accept a reservation from, to issue or otherwise provide a ticket to, or take on board, a person on the grounds of disability or of reduced mobility, as well as for breaches of the provisions of paragraph 4.

In contrast, no penalties are imposed on such persons where:

- a) having refused to accept a reservation or to issue or otherwise provide a ticket to, when permitted, carriers, travel agents and tour operators do not inform the person concerned about any acceptable alternative service, in breach of the obligation laid down in Article 10 (2) of Regulation (EU) No 181/2011;
- b) having refused permission to board on the grounds of disability or reduced mobility, they do not offer the passenger and any accompanying person the choice between the right to

- reimbursement and the continuation of the journey or re-routing (except where not feasible), in breach of the obligation laid down in Article 10 (3) of Regulation (EU) No 181/2011¹⁸;
- c) having refused to accept a reservation from, to issue or otherwise provide a ticket to, or to take on board a person on the grounds of disability or of reduced mobility, when permitted, they do not inform the person in question of the relevant reasons in writing within five working days of the request, in breach of the obligation laid down in Article 10 (5) of Regulation (EU) No 181/2011.

It should be noted that, as for transport by sea and inland waterway, with respect to a similar rule as that under consideration (Article 8 of Regulation (EU) No 1177/2010 “*Exceptions and special conditions*”), specific penalties are laid down in Legislative Decree No 129/2015, at least for the infringement of the obligation to “*make all reasonable efforts to propose to the person concerned an acceptable alternative transport on a passenger service or a cruise operated by the carrier*” (paragraph 2) and for the infringement of the obligation to inform the disabled person or person with reduced mobility in writing no later than five working days of the request, of the reasons why the reservation was not accepted, the ticket was not issued or otherwise provided or the person was not embarked (paragraph 5)¹⁹.

To ensure full effectiveness of the right to transport of disabled persons or persons with reduced mobility, a specific sanctioning system should therefore be introduced also in the cases under consideration.

Compensation in respect of wheelchairs and other mobility equipment

Pursuant to Article 17 (“*Compensation in respect of wheelchairs and other mobility equipment*”) of Regulation (EU) No 181/2011:

- “1. Carriers and terminal managing bodies shall be liable where they have caused loss of or damage to wheelchairs, other mobility equipment or assistive devices. The loss or damage shall be compensated by the carrier or terminal managing body liable for that loss or damage.*
- 2. The compensation referred to in paragraph 1 shall be equal to the cost of replacement or repair of the equipment or devices lost or damaged.*

¹⁸ For the sake of completeness, as regards air transport, Article 4 (2) of Legislative Decree No 24/2009 provides for a special penalty for cases in which, having denied a disabled person or a person with reduced mobility embarkation on the grounds of one of the derogations allowed under Article 4 of Regulation (EC) No 1107/2006, air carriers, their agent or tour operators do not offer the right to reimbursement of the ticket or re-routing also to any accompanying person (Article 4 (2) of Legislative Decree No 24/2009).

¹⁹ In fact, pursuant to Article 7 (“*Right to transport*”) of Legislative Decree No 129/2015: “1. *Except in the cases set out in Article 8 (1) of the Regulation, carriers, travel agents or tour operators that refuse to accept a reservation from, to issue or otherwise provide a ticket to or to embark a person on the grounds of disability or of reduced mobility shall be subject to an administrative fine ranging from EUR 500 to EUR 5,000. The same penalty shall apply to carriers, travel agents or tour operators that, in the absence of the conditions laid down in Article 8 (4) of the Regulation, require the disabled person or person with reduced mobility to be accompanied by another person who is capable of providing the necessary assistance to him or her.*

2. *Carriers, travel agents or tour operators that infringe Article 8 (2) of the Regulation shall be subject to an administrative fine ranging from EUR 150 to EUR 1,500. The same penalty shall apply to carriers, travel agents or tour operators that, in breach of Article 8 (5), do not inform the disabled person or person with reduced mobility in writing, no later than five working days of the request, of the reasons why they refused to accept the reservation, to issue or otherwise provide a ticket to or to embark the passenger”.*

3. *Where necessary, every effort shall be undertaken to rapidly provide temporary replacement equipment or devices. The wheelchairs, other mobility equipment or assistive devices shall, where possible, have technical and functional features similar to those lost or damaged."*

Legislative Decree No 169/2014 does not provide for any penalty in the event that carriers or terminal managing bodies do not undertake every effort to rapidly provide temporary replacement of lost or damaged equipment or devices, as provided for in paragraph 3 of the above article.

In contrast, Legislative Decree No 129/2015 concerning transport by sea and inland waterway, with respect to a similar provision²⁰, prescribes a specific penalty for this purpose²¹, ranging from EUR 150 to EUR 900.

In view of the relevance of the inconvenience caused to the user by the loss or damage of the equipment and devices in question, and on account of the opportunity to ensure consistency of the sanctioning systems relating to the passengers' rights in the various modes, specific sanctioning rules should be introduced also for the cases under consideration in the context of the provisions of Article 11 (*"Assistance at designated terminals and on board buses and coaches"*) of Legislative Decree No 169/2014.

3. Further measures necessary to ensure the correct application of EU Regulations

3.a Prescriptive powers

In the areas falling under the Authority's remit pursuant to Legislative Decrees No 70/2014, No 129/2015 and No 169/2014, it should be also noted that no specific powers have been specified to require undertakings, after the establishment of an infringement, to regulate their persisting conduct, be it an act or omission, so as to ensure the passengers' rights granted under the EU Regulations.

Although the power to order the cessation of harmful conduct is considered to be implicit in all cases in which the Authority is empowered by the law to adopt financial penalties, it would seem appropriate to clarify this power, by accompanying it with specific sanctioning measures to ensure compliance of the regulated entities with their obligations.

This would provide users and economic operators with more direct and explicit references to the Authority's powers in this area.

Such a prescriptive power is also expressly provided for in Article 2 (20) (d) of Law No 481 of 14 November 1995 (*"Rules governing competition and the regulation of public utility services. Establishment of regulatory authorities for public utility services"*) concerning the independent authorities established pursuant to that law, and by Article 37 (3) (f) of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No 214 of 22 December 2011, establishing the Authority, albeit with reference to the cessation of conduct contrary to the regulatory acts adopted and to the commitments entered into by the regulated entities.

²⁰ Article 15 (*"Compensation in respect of mobility equipment or other specific equipment"*), paragraph 4 of Regulation (EU) No 1177/2010: *"Moreover, every effort shall be undertaken to rapidly provide temporary replacement equipment which is a suitable alternative."*

²¹ Article 10 (*"Assistance in ports and onboard ships"*), paragraph 2 of Legislative Decree No 129/2015: *"Carriers, terminal operators, travel agents or tour operators that infringe their obligations under Article 11 (4), (5), (12) and 15 (4) of the Regulation shall be subject to an administrative fine ranging from EUR 150 to EUR 900"*.

This prescriptive power and the related penalty could be introduced by amending Article 5 (*“Procedure for establishment and imposition of penalties”*) of Legislative Decree No 70/2014 and the corresponding Article 4 of Legislative Decree No 129/2015 and Legislative Decree No 169/2014.

3.b Reduced payment

Another point worth highlighting is the issue, in some respects similar, concerning the reduced payment of the penalties imposed by the Authority.

The conduct of sanctioning proceedings under the Authority’s remit has showed a widespread use of the possibility, granted under Law No 689 of 24 November 1981, to terminate the proceedings by means of reduced payment of penalties. Under Article 16 of Law No 689/1981, with the reduced payment, the person subject to the penalty, terminates the proceedings against him or her through *“the payment of a reduced amount equal to one third of the maximum penalty prescribed in respect of the infringement or, if more favourable and where the minimum amount of the penalty prescribed by law is set, equal to twice the relevant amount (...)”*.

In this regard, it was noted that 40 of the 55 sanctioning proceedings initiated between the 10th of September 2015 and the 2nd of August 2018 in respect of passenger rights in rail, bus and coach, or sea and inland waterway transport were concluded, at least for one of the contested infringements, with the reduced payment of the relevant penalty.

While the benefits of the above institution in terms of efficiency of the administrative action are generally appreciable, in the Authority’s opinion, the possibility of resorting to reduced payment even in the event of repetition of the same infringement by the same operator (cf. Article 8a (5) of Law No 689/1981) undermines effectiveness, proportionality and dissuasiveness of the enforcement system of passengers’ rights. The Authority therefore considers that recourse to the institution is wholly incompatible in the event of repeated infringements of users’ rights.

For the purpose of clarifying to users and economic operators this incompatibility which can already be derived from the legal system²², an unequivocal derogation from the reduced payment of penalties should be provided for in the event of repetition of the infringement.

4. Coordination measure and final note

With respect to Legislative Decree No 70/2014, it should be also noted that, for the sake of consistency with Legislative Decrees No 169/2014 and No 129/2015 and with the provision of Article 30 of Regulation (EC) No 1371/2007, the term *“monitoring body”* should be replaced throughout the text by *“body responsible for the enforcement”*.

Finally, attention should be paid to the appropriate level of all penalties provided for in the relevant legislative decrees, in order to assess whether they should be increased to make them more meaningful so as to ensure

²² Cf. compatibility clause contained in Article 5 (1) of Legislative Decree No 70/2014 and corresponding provisions of Legislative Decrees No 169/2014 and No 129/2015, under which *“[f]or the determination and imposition of administrative fines by the body, the provisions under Chapter I, Sections I and II, of Law No 689 of 24 November 1981 shall apply, in so far as they are consistent with the provisions of this article.”*

effective and efficient enforcement of passenger rights and improve the overall quality of the travel experience, be it mono- or multi-modal.

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The President
Andrea Camanzi