



# Report by the Federal Railway Authority

on the Activities to enforce the Rights of Passengers  
when Travelling by Sea and Inland Waterway in  
accordance with Article 26 of Regulation (EU) No  
1177/2010



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## Table of Contents

1. Introduction .....	4
2. Functions and activities of the national enforcement body as an appeal body .....	6
2.1 General.....	6
2.2 Data concerning the handling of complaints in 2019 .....	7
2.3 Data concerning the handling of complaints in 2020 .....	9
2.4 Prospects for the handling of complaints.....	10
3. Enforcement of passenger rights by supervisory measures.....	12
3.1 General.....	12
3.2 Data on the proactive enforcement of passenger rights in 2019.....	12
3.2.1 Terminal operators/port authorities .....	13
3.2.2 Carriers (shipping companies) .....	14
3.3 Data on the proactive enforcement of passenger rights in 2020.....	15
3.3.1 Terminal operators/port authorities .....	15
3.3.2 Carriers (shipping companies) .....	16
3.4 Prospects for the enforcement of passenger rights by supervisory measures .....	16
4. Other activities of the national enforcement body .....	18
4.1 Public relations work by the national enforcement body .....	18
4.2 Cooperation between the national enforcement bodies.....	18
5. Conclusion .....	19



## 1. Introduction

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>1</sup> has been in force since 18 December 2012. Article 26 of Regulation (EU) No 1177/2010 states that the national enforcement bodies shall publish a report on their activity in the previous two calendar years every two years after 1 June 2015.

Section 3(1) of the EU Ship Passenger Rights Act (EU-Fahrgastrechte-Schiffahrt-Gesetz, EU-FahrgRSchG) has designated the Federal Railway Authority (EBA) as the national enforcement body. This entity performs the tasks for the enforcement of Regulation (EU) No 1177/2010 making use of the synergy effects from the lessons learned as the national enforcement body for railway and bus/coach transport. Moreover, the EBA is the body that hears appeals in cases where it has not been possible for complaints submitted to the carrier to be resolved (section 3(2) of the EU-FahrgRSchG and first sentence of Article 25(3) of Regulation (EU) No 1177/2010).

Germany did not make use of the exemption provided for in Article 2(3) and (4) of Regulation (EU) No 1177/2010.

Passengers may submit their passenger rights complaints not only to the national enforcement body at the Federal Railway Authority but may, in accordance with section 6 of the EU FahrgRSchG, also contact dispute resolution bodies recognized by the Federal Ministry of Transport and Digital Infrastructure (BMVI), provided that the concerned company is a member thereof. The German Conciliation Body for Public Transport (Schlichtungstelle für den öffentlichen Personenverkehr e.V., söp) is the dispute resolution body for passengers travelling by sea and inland waterway.

In 2020, the COVID-19 pandemic confronted the national enforcement body with a new challenge. On the one hand, it was not possible for the body responsible for enforcing the rights of passengers to conduct checks on the ground. The way in which enforcement was planned and carried out had to be adapted to the new circumstances. On the other hand, the national enforcement body's complaints management recorded an increasing number of

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<sup>1</sup> Hereinafter referred to as: Regulation (EU) No 1177/2010



submissions as a result of services being cancelled or passengers cancelling trips by way of precaution.

In the shipping sector, the outbreak of the COVID-19 pandemic meant that ferry services could only operate a restricted service in some cases. The cruise sector came to an almost complete standstill. Because of the numerous travel advisories for EU and non-EU countries, only very few cruises took place.



## **2. Functions and activities of the national enforcement body as an appeal body**

### **2.1 General**

Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway has been in force since 18 December 2012. The Federal Railway Authority was designated as national enforcement body. As part of this function, the Federal Railway Authority has, among other things, to deal with complaints submitted by passengers.

Article 25(3)(a) of Regulation (EU) No 1177/2010 in conjunction with section 3(2) of the EU-FahrgRSchG, states that passengers have first of all to contact the carrier before consulting the national enforcement body as the appeals body. Subsequently, passengers may submit a complaint regarding the decision taken by the carrier to the national enforcement body for review if they are of the opinion that the carrier did not observe their passenger rights guaranteed by law.

Initially, there were relatively few enquiries/complaints regarding the rights of passengers. By 2018, however, the number of submissions received by the National Enforcement Body for the Rights of Passengers when travelling by Sea and Inland Waterway had already tripled and remained at this level in 2019, whereas in 2020 there was a 2.5-fold rise over the previous year's figure. Of these, around 50 % were attributable to the COVID-19 pandemic. Thus, the total number of submissions continues to be significantly lower than the reference values for the rail and road modes.

To ensure that it is possible to compare the number of complaints between the individual transport modes, the Federal Ministry of Transport and Digital Infrastructure, which is competent in this respect, defined the term "complaint" in July 2016 as follows. Accordingly, "complaint", as defined by the relevant EU Passenger Rights Regulation, means only written submissions reporting an infringement of the relevant Regulation and for which the Federal Railway Authority as the national enforcement body takes a decision of substance.

In practice, this means that, for example, such submissions where the EBA only refers the passenger to the carrier, to other regulatory authorities, to other national enforcement bodies



or to dispute resolution bodies cannot, for statistical purposes, be deemed complaints under passenger rights law. This includes submissions on, for instance, service deficiencies or civil law claims by travellers, as well as submissions relating to passenger rights for which a different enforcement body is responsible and are thus not reviewed in any more detail by the German enforcement body.

Of course, other complaints not covered by the narrow definition of the term “complaint” will continue to be handled and recorded for statistical purposes by the EBA. In the following, these are referred to as submissions.

The complainants will receive a reply to all submissions either explaining the function of the Federal Railway Authority as an appeal body and the classification of their submission under passenger rights law and/or referring them, if appropriate, to the carrier or the dispute resolution body. In the case of complaints covered by the narrow definition of the term, the complainant will receive an explanation of the outcome of the administrative procedure conducted with the obligated party under the Regulation and of the settlement of any claims.

## **2.2 Data concerning the handling of complaints in 2019**

In 2019, a total of 33 written and 15 oral submissions in connection with the rights of passengers travelling by sea and inland waterway were received by the national enforcement body. Oral enquiries are not described in any more detail below.

In the case of one of these submissions, the passenger had directly contacted the national enforcement body rather than the carrier as a first step. The submitter was thus initially referred to the carrier in accordance with Article 25(3)(a) of Regulation (EU) No 1177/2010 in conjunction with section 3(2) of the EU-FahrgRSchG and section 2 of the EU-FahrgeRSchV.

For reasons of competence, 17 submissions were transferred or referred to other European national enforcement bodies. Of these, 13 related to Article 19 of Regulation (EU) No. 1177/2010 regarding compensation in the event of delay in arrival, 3 to the way in which complaints had been handled (Article 24) and one to the entitlement to reimbursement deriving from Article 18(2).



13 written submissions related to general enquiries. 4 submissions concerned the way in which complaints had been handled (Article 24 of Regulation (EC) No 1177/2010), 3 submissions concerned the provision of information on the rights of passengers (Article 23 of Regulation (EC) No 1177/2010) and 6 involved issues that were not directly related to passenger rights but addressed questions of service and other aspects associated with the ship's voyage.

2 submissions comply with the cross-modal narrow definition of the term "complaint" as mentioned above.

<b>Type and contents of the complaints in 2019<sup>2</sup></b>				
Regulation (EU) No 1177/2010	Contents	Number of complaints	Infringements	Remarks
Article 18	Re-routing and reimbursement of the ticket price in the event of cancelled or delayed departures	1	0 <sup>3</sup>	The ticket price was reimbursed after clarification of the facts
Article 19	Compensation by reduction of the ticket price in the event of delay in arrival	1	1 <sup>3</sup>	Compensation paid during the administrative proceedings after the facts had been clarified.

In terms of content, one of the complaints referred to the rights in the event of cancelled or delayed departure (Article 18(2) of Regulation No 1177/2010). After the facts had been clarified, the proceedings were discontinued without an infringement.

On the other hand, an infringement was identified in the case of the second complaint regarding compensation in the event of delay in arrival (Article 19 of Regulation No 1177/2010).

However, further measures or penalties to enforce the rights of passengers were not necessary. The shipping company in question settled the outstanding compensation payment after the facts had been clarified.

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<sup>2</sup> Evaluated on 1 February 2021

<sup>3</sup> Related to all complaints complying with the narrow definition of the term "complaint".





### **2.3 Data concerning the handling of complaints in 2020**

In 2020, 83 written and 35 oral submissions in connection with the rights of passengers travelling by sea and inland waterway were received by the national enforcement body. Oral enquiries are not described in any more detail below.

In 9 cases, the passenger had directly contacted the national enforcement body. The submitters were thus initially referred to the carrier in accordance with Article 25(3)(a) of Regulation (EU) No 1177/2010 in conjunction with section 3(2) of the EU-FahrgRSchG and section 2 of the EU-FahrRSchV.

For reasons of competence, 14 submissions were transferred to other European national enforcement bodies. In the case of 13 submissions, reference was merely made to another national enforcement body, because the EBA was not the competent authority and was unable, on the basis of the facts of the case, to determine, without closer examination, whether there had been an obvious infringement of the Passengers' Rights Regulations. Of these 27 submissions, 23 related to the entitlement to reimbursement deriving from Article 18(2) of Regulation (EU) No 1177/2010, 2 to the entitlement to compensation deriving from Article 19 and 1 to the way in which complaints had been handled (Article 24). One submission could not be classified because the facts of the case were scant.

36 written submissions related to general enquiries. 11 of these were connected to the entitlement to reimbursement deriving from Article 18 of Regulation (EU) No 1177/2010. 2 submissions involved claims for compensation due to a delay in arrival (Article 19(1)). The subject matter of 1 submission was the obligation to provide information in the event of cancelled or delayed departures (Article 16) and the subject matter of 1 submission was the provision of assistance (Article 17). 21 submissions involved issues that were not directly related to passenger rights but addressed questions of service and other aspects associated with the ship's voyage.

Of the total of 63 written submissions that concerned general enquiries and transfers/referrals to other national enforcement bodies, 41 submissions were directly linked to the COVID-19 pandemic.



11 submissions comply with the cross-modal narrow definition of the term “complaint” as mentioned above.

Type and contents of the complaints in 2020 <sup>4</sup>				
Regulation (EU) No 1177/2010	Contents	Number of complaints	Infringements	Remarks
Article 7(1)	Right to transport	1	0 <sup>5</sup>	
Article 18	Choice between re-routing and reimbursement	10		In connection with COVID-19 pandemic

One complaint concerned the right to transport under Article 7(1) of Regulation (EU) No 1177/2010.

10 complaints were directly linked to the COVID-19 pandemic. In terms of content, they referred to the choice between re-routing and reimbursement provided for in Article 18 of Regulation (EU) No 1177/2010. Of these, 8 complaints concerned the right to reimbursement of the ticket price or the costs of re-routing (Article 18(2)), one complaint concerned the range of choices for re-routing or reimbursement (Article 18(1)) and one concerned the time taken to make the reimbursement (Article 18(3) of Regulation (EU) No 1177/2010).

After clarification of the facts, no infringements were identified. This meant that in 2020, as in previous years, no penalties were required in this respect.

## 2.4 Prospects for the handling of complaints

On the whole, the number of complaints received in the sea and inland waterway sectors continues to be extremely low in the period under review (2019/2020) compared with the rail and road modes. One thing that is conspicuous is the 5.5-fold increase in the number of complaints concerning the assertion of possible claims for reimbursement under Article 18 of

<sup>4</sup> Evaluated on 1 February 2021

<sup>5</sup> Related to all complaints complying with the narrow definition of the term “complaint”.



Regulation (EU) No 1177/2010. The reason for this increase is the higher number of cancellations due to the COVID-19 pandemic. Another thing is a continuation of the trend in submissions for which other European national enforcement bodies are responsible.

In addition, the increase in the number of submissions is a sign of the public's rising level of awareness of the Federal Railway Authority as the national enforcement body in the period under review (2019/2020). This is apparent not only in the sea and inland waterway sectors but also in the rail and bus and coach transport sectors.



### **3. Enforcement of passenger rights by supervisory measures**

#### **3.1 General**

During the period under review (2019/2020), as in previous years, the Federal Railway Authority, as the national enforcement body, also took supervisory measures in accordance with Article 25(1) of Regulation (EU) No 1177/2010 in conjunction with section 4 of the EU-FahrgRSchG to ensure compliance with Regulation (EU) No 1177/2010.

In the course of periodic inspections of terminals, the national enforcement body checked whether pledges given with regard to the implementation of passenger rights had been kept. Alongside the ferry port and cruise terminals, the terminals for transport services to and from the North and East Frisian Islands were also included in the inspections in the period under review (2019/2020).

The inspections of shipping companies comprised questions concerning the provision of information to passengers and the obligations in connection with travellers with reduced mobility as well as complaint handling practices.

Given that, in the past, the way in which inland waterway carriers as well as tour operators and travel agents have treated passengers was, in the majority of cases, in compliance with passenger rights legislation, supervisory measures are only carried out for these obligated parties if a relevant incident occurs. Therefore, in reporting years 2019 and 2020, no checks were carried out.

#### **3.2 Data on the proactive enforcement of passenger rights in 2019**

In 2019, a total of 18 inspections were carried out. Terminal operators accounted for 13 of these inspections, carriers for 5.



### 3.2.1 Terminal operators/port authorities

In 2019, the national enforcement body carried out 13 inspections at terminal operators.

<b>Key issues of the inspections of terminal operators/port authorities in 2019<sup>6</sup></b>			
Regulation (EU) No 1177/2010	Contents	Number of inspections	Infringements
Article 12(3)	Establishment of a point of contact for disabled persons or persons with reduced mobility	13	0
Article 14	Instruction of the personnel in procedures for dealing with disabled persons or persons with reduced mobility		
Article 23	Information on passenger rights Indication of the contact details of the enforcement body		

9 inspections were carried out at Baltic Sea ferry ports and 4 supervisory measures at terminals with access to the North Sea. Here, the obligation under Article 12(3) of Regulation (EU) No 1177/2010 to establish a point to which disabled persons and persons with reduced mobility can address their requests for assistance as well as the obligation under Article 14 of Regulation (EU) No 1177/2010 with regard to the training and instruction of personnel in their dealings with disabled persons were checked by means of a questioning. Furthermore, the terminal operators were monitored as to their compliance with the obligation to provide information on passenger rights under Article 23 of Regulation (EU) No 1177/2010.

Almost all the terminal operators were willing to cooperate. Only in one case did a terminal operator have to be admonished to cooperate by means of a hearing on an intended order to provide information under section 4(1)(2) of the FahrgRSchG.

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<sup>6</sup> Evaluated on 22 January 2021



### 3.2.2 Carriers (shipping companies)

In 2019, the national enforcement body carried out 5 supervisory measures at carriers/shipping companies.

<b>Key issues of the inspections of carriers/shipping companies in 2019<sup>7</sup></b>			
Regulation (EU) No 1177/2010	Contents	Number of inspections	Infringements
Article 16	Provision of information on cancelled or delayed departure	5	1
Article 22	Provision of information throughout the journey		
Article 23	Provision of information on passenger rights, indication of the contact details of the enforcement body.		
Article 24	Complaints		

One shipping company was inspected to check whether it had handled complaints in a legally compliant manner. For this purpose, the shipping company was requested to provide several files, which were examined to check whether the complaints had been handled in compliance with the Regulation. No infringements were identified.

4 inspections of ferries operated by various carriers related to compliance with and implementation of the obligations to provide information in the event of cancellation and delayed departure, the obligations to provide travel information during the voyage and the obligations to provide information concerning the rights of passengers and the contact details of the national enforcement body (Articles 16, 22 and 23 of Regulation (EU) No 1177/2010).

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<sup>7</sup> Evaluated on 22 January 2021



In one case, an identified infringement of Article 16 in conjunction with Article 22 of Regulation (EU) No 1177/2010 was corrected within the scope of administrative proceedings. No other penalties had to be imposed.

### **3.3 Data on the proactive enforcement of passenger rights in 2020**

Since mid-March 2020, the regular operations of the national enforcement body have been severely impacted by the COVID-19 pandemic. With only a few justified exceptions, field work and official trips were no longer possible. This resulted in a change in the planning of supervisory activities. Because of the confinement measures and distancing rules in place, it was no longer possible for the body responsible for enforcing the rights of passengers to conduct on-site inspections. These were replaced by written measures that requested the obligated parties to furnish appropriate proof that the legislative provisions were being complied with.

Thus, in 2020, a total of 6 inspections were carried out. Terminal operators accounted for 5 of these inspections and a carrier for one.

#### **3.3.1 Terminal operators/port authorities**

In 2020, 5 supervisory measures were carried out at a terminals used by services to and from the North Sea islands.

This involved checking compliance with the obligation under Article 12(3) of Regulation (EU) No 1177/2010 to establish a point to which disabled persons and persons with reduced mobility can address their requests for assistance. Furthermore, the terminal operators were monitored as to their compliance with the obligation to provide information on passenger rights under Article 23 of Regulation (EU) No 1177/2010. Since no infringements were identified, there was no need to take any administrative measures.



<b>Key issues of the inspections of terminal operators/port authorities in 2020<sup>8</sup></b>			
Regulation (EU) No 1177/2010	Contents	Number of inspections	Infringements
Article 12(3)	Establishment of a point of contact for disabled persons or persons with reduced mobility	5	0
Article 23	Provision of information on passenger rights, indication of the contact details of the enforcement body.		

### **3.3.2 Carriers (shipping companies)**

In 2020, the national enforcement body carried out one supervisory measure at a carrier/shipping company. This was based on information provided by the national enforcement body's complaints management regarding the general conditions of carriage on the carrier's website. In this case, a shortcoming with regard to Article 23 of Regulation (EU) No 1177/2010 was identified and remedied immediately outside administrative proceedings.

### **3.4 Prospects for the enforcement of passenger rights by supervisory measures**

The challenge currently faced is to restore the conditions for a progressive return to normal operations. To this end, a dedicated Task Force at the Federal Railway Authority developed a structured approach, effective 1 August 2020, which has struck a balance between the necessary performance of the functions assigned to the Federal Railway Authority and the health of its staff.

However, owing to the staff structure of the national enforcement body, the EBA will be unable, for the foreseeable future, to perform its active oversight of the rights of passengers on the scale to which it is accustomed.

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<sup>8</sup> Evaluated on 22 January 2021





Once the exceptional circumstances caused by the COVID-19 pandemic have come to an end, the focus of the inspections of the terminals used by services to and from the islands is once again to be on ensuring that the basic requirements set out in Regulation (EU) No 1177/2010 are met.

Recent shipping incidents are to be taken as an occasion to inspect the respective shipping companies with regard to the implementation of and compliance with passenger rights. In this context, complaint files will be requested and reviewed. These supervisory measures are also designed to identify the sectors with possible shortcomings in the field of passenger rights in order to define further key areas on which the inspections will focus.

As a result of the continuously good findings in recent years, inspections on inland waterway vessels and of ticket vendors will only be performed occasionally in the future.



## **4. Other activities of the national enforcement body**

### **4.1 Public relations work by the national enforcement body**

In addition to providing information on passenger rights on the Federal Railway Authority's website, the national enforcement body, in the period under review, also made use of flyers on passenger rights in rail, maritime and inland waterway and bus and coach transport in order to inform passengers about their rights.

At the annual open day of the Federal Ministries in Berlin, the national enforcement body regularly offers a point of contact to provide members of the public with information on passenger rights. In the period under review, this event was held from 17 to 18 August 2019. In 2020, the open day of the ministries was cancelled by the Federal Ministry of Transport and Digital Infrastructure due to the COVID-19 pandemic.

### **4.2 Cooperation between the national enforcement bodies**

Alongside the exchange of information between the national enforcement bodies (NEBs) in maritime and inland waterway transport under the auspices of the European Commission in Brussels, individual complaint cases are transferred to other national enforcement bodies if these cases are outside the remit of the Federal Railway Authority. On an ad hoc basis, the German NEB avails itself of the opportunity for an exchange of views on overarching issues with the enforcement bodies of other EU Member States, for instance with the NEB of Italy.



## 5. Conclusion

In comparison with the rail and bus and coach transport modes, the number of complaints due to suspected infringements of Regulation (EU) No 1177/2010 in maritime and inland waterway transport continues to be very low.

Even under the special conditions of the COVID-19 pandemic, the great willingness of the parties obligated to cooperate in accordance with Regulation (EU) No 1177/2010 is reflected by the fact that their behaviour is compliant with the Regulation.

It has proved helpful to be able to use the lessons learned from the enforcement of passenger rights for the rail and road modes. Since the administrative governance for the handling of complaints as well as for the implementation of supervisory measures is uniform across all modes of transport, the national enforcement body can make use of the synergies.

The activities of the national enforcement body will continue to target the consolidation of the rights of passengers travelling by sea and inland waterway at terminal operators and carriers, thereby crucially boosting the aspect of consumer protection.