



The Voice  
of European  
Railways



Press Release  
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## **'Force majeure': Court decision widens the gap between transport modes**

Today's decision of the Court of Justice of the European Union concludes that railways may not be exonerated from liability for train delays in case of *'force majeure'*. While the railways understand this judgment as aiming at a high level of consumer protection, they question the proportionality of this decision since other transport modes are not obliged to pay compensation for delays in case of extraordinary circumstances. This new scenario clearly violates the principle of a level playing field between transport modes. The Community of European Railways and Infrastructure Companies (CER) and the International Rail Transport Committee (CIT) call therefore upon EU decision-makers to ensure a more harmonised and consistent application of the principle of *'force majeure'* across transport modes.

The Court of Justice of the EU (ECJ) confirmed today the opinion delivered by Advocate General Niilo Jääskinen on 14 March 2013 in the case ÖBB vs Austrian National Enforcement Body (C-509/11) which concluded that railway undertakings may not be exonerated from their liability for delays. Concretely, this means that rail passengers are entitled to financial compensation for a delay of more than 60 minutes even if the delay is due to a case of *'force majeure'*, e.g. in case of severe weather conditions causing railway line closure.

According to the ECJ, Regulation 1371/2007 on Rail Passenger Rights contains no cause of exoneration for delays, unlike for the aviation, maritime and coach sectors. If decision-makers had the intention to limit the right to compensation for delay on grounds of *'force majeure'*, they would have indicated this clearly in the Regulation, the ECJ said.

CER and CIT note that the European Commission had already submitted written comments to the ECJ to clarify that the rules actually establish a limit to railways' liability in case of *'force majeure'*. The annex of Regulation 1371/2007 refers in fact to the Convention concerning International Carriage by Rail (COTIF)<sup>1</sup>, which states that *'force majeure'* is a ground for limiting the liability of railways in case of delays. This is also a general principle of contract law - nobody is expected to be liable for *'force majeure'*.

CER and CIT therefore call on the European Commission to ensure that railways compete with other transport modes on a level playing field, including in the area of passenger rights. In this regards, CER and CIT welcome the recently published report<sup>2</sup> on the implementation of Regulation 1371/2007, where the Commission confirmed its intention to consider aligning the obligations among the different transport modes by asserting that railways are not obliged to pay compensation in the cases of *'force*

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<sup>1</sup> Article 32 of the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV), Appendix A to the COTIF.

<sup>2</sup> COM(2013) 587 final



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*majeure*'.

CER Executive Director Libor Lochman said *“We will definitely analyse the ECJ ruling in detail; in any case we can already state that the ECJ judgment provides a strong argument for what CER has been saying about for a long time: there is an urgent need to ensure a regulatory level playing field among transport modes, including in the area of passenger rights”*.

*“We will support our members with the implementation of the ruling and make sure that international passengers benefit from their rights as confirmed by the ECJ. However we must be aware that this may have an impact on fares”* stated CIT Secretary General Cesare Brand.

#### Notes to the editor:

The press release for the ECJ can be found [here](#).

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The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 European railway undertakings and infrastructure companies. CER represents the interests of its members towards the European institutions as well as other policy makers and transport actors. CER's main focus is promoting the strengthening of rail as essential to the creation of a sustainable transport system which is efficient, effective and environmentally sound. For more information, see [www.cer.be](http://www.cer.be)

The International Rail Transport Committee (CIT) is an association of 125 freight and passenger railway undertakings (RU) and also maritime and ferry companies as full members and 80 RU through associated members, from EU and non EU member states. The aim of CIT is the transposition of the law of international carriage by rail and in particular the Convention concerning international carriage by rail (COTIF) and its consistent application. Within this framework: the development of close working relationships between members, the representation of the interest of members and the provision of other services. For more information, see <http://www.cit-rail.org>