

## WILL THE RAIL REGULATION (EU) 2021/782 IMPROVE PASSENGERS' LEGAL POSITION?

Dr. Dorota Ambrożuk-Wesołowska

University of Szczecin, Poland  
e-mail: [dorota.ambrozuk@usz.edu.pl](mailto:dorota.ambrozuk@usz.edu.pl); <https://orcid.org/0000-0003-2828-2049>

**Abstract.** The objective of this paper is to analyse the legal position of train passengers to whom provisions of Regulation (EU) 2021/782 of the European Parliament and of the Council on rail passengers' rights and obligations apply. This regulation will replace Regulation 1371/2007. The article attempts to answer the question whether the provisions of the new regulation truly strengthen the legal situation of passengers, as assumed therein. After an analysis and comparison of prescripts of both of these regulations the author points out that the aim of the new one has not been fully achieved. It is because the new law also introduces such provisions which do not only not improve the degree of protection of passengers, but also definitively weaken this protection. The author also points out the inadequacy of certain measures and formulates relevant *de lege ferenda* conclusions.

**Keywords:** Regulation (EU) 2021/782; rights and obligations of passengers; passenger rail transport

### INTRODUCTION

On 29 April 2021 the European Parliament and the EU Council adopted Regulation 2021/782 on rail passengers' rights and obligations.<sup>1</sup> It will enter into force on 7 June 2023. On this day Regulation (EU) 1371/2007<sup>2</sup> will be repealed. The aim of the new Regulation 2021/782, as seen in recital (1) of its preamble, is to enhance protection for passengers and to encourage an increase in rail travel. It is at the same time emphasized that rail passengers should be fully protected, regardless of the part of the EU territory they are travelling through. Therefore, as a rule, passengers that travel internationally and domestically have been granted the same rights. At the same time, it allowed an introduction of exclusions with regard to rail services offered for a historical or touristic use, and also with regard to urban, suburban and

---

<sup>1</sup> Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations, OJ L 172/1, 17.05.2021.

<sup>2</sup> Regulation (EC) 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315/14, 03.12.2007.

regional services. New solutions have been introduced which allow, for example, a railway undertaking<sup>3</sup> to release itself from the payment of compensation for delays, missed connections and cancellations; it also introduces regulations on the transport of bicycles or on issuing through-tickets. Provisions on the use of railway services by persons with disabilities and persons with reduced mobility have also been amended and supplemented.

Already at the stage of legislative works on the new law, the EU Council announced in its press release of 25 January 2021<sup>4</sup> that the reform of rail passenger rights will strengthen the rights of all passengers, and in particular those with disabilities, it will make it easier to transport bicycles and to re-route and it will increase the popularity of through-tickets. Some representatives of authorities took a similar stance, for example, the Portuguese Minister of Infrastructure and Housing Nuno Santos,<sup>5</sup> and, after the adoption of Regulation 2021/782, prof. Bogusław Liberadzki, a Polish EMP,<sup>6</sup> or Germany's Federal Minister of Justice and Consumer Protection Christine Lambrecht. She pointed out that in the future there will be clear rules and a stronger protection of all train travellers throughout the EU and boosting train travels is key to environmental protection and to achieving EU's climate goals.<sup>7</sup> However, there have been also views that criticised this reform, especially for introducing, as has already been outlined, the force majeure clause that excludes carrier liability.<sup>8</sup> Only few scholars and commentators have offered their opinions on the reform [Rott 2021].<sup>9</sup>

---

<sup>3</sup> A railway undertaking, pursuant to Article 3(1) of Regulation 2021/782, should be understood as an undertaking defined in Article 3(1) of Directive 2012/34/EU of 21 November 2012 establishing a single European railway area (OJ L 343/32, 14.12.2012 as amended), that is any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only.

<sup>4</sup> *Większe prawa pasażerów kolei: Rada przyjęła nowe przepisy*, <https://www.consilium.europa.eu/pl/press/press-releases/2021/01/25/improved-rail-passenger-rights-adopted-by-council/> [accessed: 11.08.2022].

<sup>5</sup> *Ibid.*

<sup>6</sup> *PE rozszerza prawa pasażerów kolei. Czy aby na pewno?*, <https://podroze.onet.pl/aktualnosci/parlament-europejski-rozszerza-prawa-pasazerow-kolei/nxvqkbb> [accessed: 11.08.2022].

<sup>7</sup> *Mehr Rechte für Bahnreisende in der Europäischen Union*, <https://www.datev-magazin.de/nachrichten-steuern-recht/recht/mehr-rechte-fuer-bahnreisende-in-der-europaeischen-union-35521> [accessed: 11.08.2022].

<sup>8</sup> *Kolej w UE. Brak odszkodowań w przypadku "siły wyższej"*, <https://www.dw.com/pl/kolej-w-ue-brak-odszkodowa%C5%84-w-przypadku-si%C5%82y-wy%C5%BCszej/a-55131848> [accessed: 11.08.2022]; Madrjas 2021.

<sup>9</sup> Also, at the stage of drafting the amendments see Góra and Kłosowski 2018, 114-18.

The purpose of this article is to assess the measures adopted in Regulation 2021/782 and to solve the question of whether the new law improves protection of passengers compared to the standard in force now under Regulation 1371/2007, and whether it will help increase the share of rail transport in the transportation market, as assumed by the EU legislator. The author puts forward a thesis that this objective has not been fully achieved. Some of the adopted solutions do not improve passengers' situation, but actually worsen it. Moreover, she points to measures she believes insufficient and formulates relevant *de lege ferenda* conclusions. This study discusses the most important changes. The author uses the method of interpretation of norms of the law in force, legal comparison and a historical analysis of development of laws.

## 1. SCOPE

Regulation 2021/782 directly states that it applies to international and domestic rail journeys throughout the Union provided by railway undertakings licensed in accordance with Directive 2012/34/EU of the European Parliament and of the Council.<sup>10</sup> However, this does not mean that it will cover all journeys in the territory of the EU. This regulation gives Member States a possibility to introduce exemptions from the application of the regulation's provisions (as a rule, this does not apply to provisions relating to persons with disabilities and persons with reduced mobility). Exemptions may apply to services which are operated strictly for historical or touristic use (which is a novum, Article 2(2)) and to urban, suburban and regional rail passenger services, and international rail passenger services of which a significant part is operated outside the Union<sup>11</sup> (Article 2(6)). It also honours exemptions relating to domestic passenger services, granted under Article 2(4) of Regulation 1371/2007, but before the expiry of such an exemption Member States may exempt such domestic rail passenger services from the application of certain provisions of Regulation 1371/2007 for an additional period of no more than five years. Therefore, the changes introduced, which concern the scope of application of the new rail regulation are minute when compared to the existing one.

Maintaining the possibility for Member States to introduce such exclusions (as under Regulation 1371/2007<sup>12</sup>) will surely not contribute, at least

---

<sup>10</sup> See more about the licensing of railway undertakings Dąbrowski 2018, 51-52.

<sup>11</sup> Pursuant to Article 2(6)(b) of Regulation 2021/78, international rail passenger services of which a significant part is operated outside the Union are those services in which at least one scheduled station stop is outside the EU.

<sup>12</sup> For exemptions of its application under Regulation 1371/2007 in the territory of the Republic of Poland [Ambrożuk, Dąbrowski, and Wesołowski 2020, 37-40; Stec 2010, 973-74].

not soon, to a full unification of rules of operating transport services in the territory of the EU. While it is understandable to honour exemptions granted under Regulation 1371/2007 in national passenger services, the possibility to use further exemptions under the new Regulation is puzzling. The introduction of such exceptions is justified by having to adjust the national rail and infrastructure system to the requirements of the regulation. However, it seems that a two-year period from the moment of entry into force of Regulation 2021/782<sup>13</sup> till the moment when it becomes effective, that is until 7 June 2023 (and when it comes to Article 6(4) till 7 June 2025<sup>14</sup>), in consideration of the scope of new obligations imposed on rail companies, is a sufficient time to do such adjustments and there is no need to introduce exemptions for another period.

In practice there may also be problems in the context of introduction of exemptions relating to services operated only for historical or touristic use because they are not identified in Regulation 2021/782. Recital (6) of the preamble only points out that such rail services usually do not serve to satisfy regular transport needs and are isolated from the rest of the EU rail system and use the technology that may limit their availability. While the distinction “for historic use” should not bring any problems, identification of services solely for touristic use may raise doubts. It is not always possible to differentiate between a regular need to travel from the need to travel due to being a tourist. Member States may qualify services operated for touristic use differently, and thus apply relevant exemptions. It seems that due to the drive to unify as much as possible the rules applicable throughout the EU these questions should be specified in the regulation itself.

## 2. TRANSPORT OF BICYCLES

Regulation 2021/782 greatly extends the subject matter of transport of bicycles (Regulation No 1371/2007 devoted only one provision to this issue<sup>15</sup>). As pointed out in the communication from the Council,<sup>16</sup> this is to encourage passengers who use soft transport modes to use rail transport.<sup>17</sup> Most of

---

<sup>13</sup> The Regulation entered into force on the twentieth day following its publication, that is on 6 June 2021.

<sup>14</sup> This provision applies to a minimum number of places for bicycles.

<sup>15</sup> Pursuant to Article 5 of the Regulation 1371/2007, “railway undertakings shall enable passengers to bring bicycles on to the train, where appropriate for a fee, if they are easy to handle, if this does not adversely affect the specific rail service, and if the rolling-stock so permits”.

<sup>16</sup> See *Większe prawa pasażerów kolei: Rada przyjęła nowe przepisy*.

<sup>17</sup> It is puzzling why it was emphasized that it applies to passengers who use soft transport modes. If facilitations in the transport of bicycles are to encourage the choice of rail services,

all, transport of bicycles has become a passenger right, albeit with certain limitations. Such limitations may be introduced by a railway undertaking for safety or operational reasons (e.g. capacity limits applicable during peak hours, or where technical considerations do not permit it) but also due to the weights and dimensions of the bicycles (Article 6(3)). Terms and conditions for the transport of bicycles, including information on the availability of capacity, are published on railway undertakings' websites.

It will be down to the railway undertaking, as a rule, to determine the number of places allocated to bicycles in a given train composition. The Regulation points out that this railway undertaking specifies an adequate number of such places taking into account the size of the train composition, type of services and demand for transport of bicycles. However, it is reserved that each train composition must have at least four places for bicycles, but Member States may set a higher limit for the minimum number. When ordering a new rolling stock, or when performing an upgrade of an existing rolling stock (where it is necessary to obtain authorisation for placing it on the market) places for the transport of bicycles must be ensured, though this shall not apply in relation to restaurant cars, sleeping cars or couchette cars (Article 6(4)). However, these provisions will only be effective from 7 June 2025 onwards.

A railway undertaking will have the right to collect fees for the transport of bicycles in a reasonable amount. If a reservation is required on a train, passengers must be able to make a reservation of a place for their bicycles. Where despite having made a reservation a passenger is refused the carriage of his bicycle without a duly justified reason, the passenger is entitled to re-routing or reimbursement (pursuant to Article 18), to a flat-rate compensation (pursuant to Article 19)<sup>18</sup> and assistance (pursuant to Article 20(2))<sup>19</sup>. It is about rights afforded to passengers in the event of a delay or loss of connection or cancellation of the service. Rights of passengers are equalled here because a railway undertaking fails to provide a service of transport of a bicycle with rights of passengers in the event of failure to perform or improper performance of the service of transporting the passenger himself.

These changes must be introduced as a "step in the right direction". However, they are insufficient to achieve the objective stipulated in the regulation.

---

and thus become part of the achievement of EU's climate policy, then they should most of all encourage car users to "abandon" their vehicles and switch to train services, e.g. if travelling on holiday and taking bicycles.

<sup>18</sup> It is about a flat-rate compensation in an adequate percentage (25% or 50% of the ticket price).

<sup>19</sup> This provision stipulates, for example, providing passengers with meals and refreshments in reasonable relation to the waiting time, with transport to an alternative departure point or to the final destination.

It does not seem that specification of the minimum number of places allocated for the transport of bicycles at four places per given composition is adequate, especially during the holiday season. This allows for only one average family to take their bicycles on board (in the two-plus-two model). Admittedly, it is a minimum level, but we do not know if railway undertakings will be interested in increasing this number, especially on rail routes that are exceptionally busy. Taking an economic calculation into account, they may obtain higher profits from the surface area dedicated to the transport of passengers than from the surface area dedicated to the transport of bicycles. The cost of transporting a bicycle is usually a small fraction of the price of a ticket and often does not depend on the route length.<sup>20</sup> Situations where passengers interested in transporting their bicycles are refused such carriage as the places have been occupied already will certainly not encourage travellers to use train services. Thus, contrary to assumptions of the new regulation, these situations will not contribute to the achievement of the EU's climate policy. Therefore, it seems that specifying a minimum number of places for bicycles should be made dependent on an estimate number of passengers transported, route, season and weather conditions (e.g. majority of people opt not to cycle in winter). There is hope that individual Member States will introduce a reasonable correction (pursuant to Article 6(4) of Regulation 2021/782).

It is also puzzling why the application of Article 6(4) that stipulates the minimum number of places for bicycles was postponed (till 7 June 2025). The period of more than two years between the regulation is passed and the moment of its entry into force (save for the already mentioned Article 6(4)) seems sufficient for railway undertakings to prepare to transporting bicycles, all the more so that this transport is stipulated in Regulation 1371/2007 that is currently in operation and some of railway undertakings already have such transport in their offer (e.g. PKP Intercity).

However, granting passengers who made a reservation for the transport of bicycles and who were denied such transport without a reasonable cause the right to reroute or to have their tickets reimbursed, the right to a flat-rate compensation or the right to specific assistance deserves approval. There will certainly be disputes here between passengers and railway undertakings on the understanding of the concept "a duly justified reason" and we will have to wait at least a few years for the courts to solve this issue.

---

<sup>20</sup> E.g. the price for transporting a bicycle on a PKP Intercity train is a flat-rate fee of PLN 9.1, irrespective of how long the route is, see *Transport of bicycles*, <https://www.intercity.pl/en/site/for-passengers/offers/special-offers-for-domestic-transport/bikes/> [accessed: 21.08.2022].

### 3. EXCLUSION OF THE RIGHT TO A FLAT-RATE COMPENSATION

The most important changes from the point of view of protection of passengers' rights concern principles of liability of railway undertakings and granting passengers the right to the so-called flat-rate compensation. Current provisions of Article 17 of Regulation 1371/2007 specify principles of this liability and grant passengers the right to compensation in the event of delay of a service but do not allow a railway undertaking to evade the payment of compensation, even if force majeure occurs [Góra and Kłosowski, 2018; Kłosowski, 2014]. CJEU's case law also confirms such a position.<sup>21</sup> Such a regulation was criticised among the transport community who are responsible for harmonising requirements on compensation in rail and air transport that recognizes the lack of exclusion of carrier liability in the event of force majeure as it brings an excessive burden on railway undertakings.<sup>22</sup>

As a response to this criticism, a catalogue of exonerating premises was introduced to Regulation 2021/782 which release a railway undertaking from the obligation to pay a flat-rate compensation, which are sometimes erroneously referred to as the "force majeure clause".<sup>23</sup> Thus, pursuant to Article 19(10) of the regulation: "A railway undertaking shall not be obliged to pay compensation if it can prove that the delay, missed connection or cancellation was caused directly by, or was inherently linked with: (a) extraordinary circumstances not connected with the operation of the railway, such as extreme weather conditions, major natural disasters or major public health crises, which the railway undertaking, in spite of having taken the care required in the particular circumstances of the case, was unable to avoid and the consequences of which it was unable to prevent; (b) fault on the part of the passenger; or (c) the behaviour of a third party which the railway undertaking, in spite of having taken the care required in the particular circumstances of the case, was unable to avoid and the consequences of which it was unable to prevent, such as persons on the track, cable theft, on-board emergencies, law enforcement activities, sabotage or terrorism. Strikes by the personnel of the railway undertaking, acts or omissions by another

---

<sup>21</sup> See CJEU of 26 September 2013 in C-509/11, *ÖBB-Personenverkehr AG*, ECLI:EU:C:2013:613.

<sup>22</sup> See *Kolej w UE. Brak odszkodowań w przypadku "siły wyższej"*. E.g. Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46/, 17.02.2004) stipulated that "An operating air carrier shall not be obliged to pay compensation [...], if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken." There is no such solution in Regulation No 1371/2007.

<sup>23</sup> See *Kolej w UE. Brak odszkodowań w przypadku "siły wyższej"*.

undertaking using the same railway infrastructure and acts or omissions of the infrastructure and station managers are not covered by the exemption referred to in point (c) [...]”

Introduction of these exonerating premises, though largely understandable as it is difficult to impose liability on a carrier where there are extraordinary weather conditions, certainly did not improve the level of protection of passengers who use rail services that Regulation 2021/782 applies to, but actually greatly undermined this level compared to the existing one. The premise that releases one from liability, i.e. unavoidable and overwhelming extraordinary circumstances related to rail traffic, will certainly inspire numerous controversies. It was built out of under-defined terms, just like the example catalogue of these circumstances, which the legislator assumed was surely intended to interpret this premise. However, it does not seem that it can play this role. This provision will undoubtedly be subject of many judicial rulings. We cannot rule out that railway undertakings, wanting to avoid liability for damages, will try to qualify as exonerating premises such cases for which they are liable or jointly liable themselves (e.g. delayed service caused by both a bad condition of the rolling stock and very bad weather conditions).

However, it needs to be emphasized that the EU legislator, formulating the exonerating premises, referred to the description formula and did not use the term “force majeure”, commonly used in national legislations. It is a consequence of the different treatment offered to this phrase in national legal systems of individual countries.<sup>24</sup> The formula adopted in the regulation has a broader scope than the concept “force majeure,” at least in those countries that condition the force majeure premise on such an event being external.

Doubts arise around the premise that releases the carrier from the obligation to pay compensation, worded as “the fault on the part of the passenger.” This requirement should rather be worded as “the sole fault on the part of the passenger,” whereas the “fault on the part of the passenger,” if there are no circumstances to apply at least one of two remaining exonerating premises identified in (a) and (c), should provide a basis to lower the amount of compensation due to the traveller as a way of limiting this compensation.

Although the new regulation makes the situation of passengers worse in this aspect, we cannot agree with the position of certain consumer organizations that the introduction of the “force majeure clause” also eliminates offers of support to passengers (when it comes to the right to meals, refreshments or accommodation in the event of a delayed arrival or departure or

---

<sup>24</sup> For more see Ambrożuk and Wesołowski 2004.



cancellation of service), who got stuck in their travels.<sup>25</sup> Exemptions referred to in Article 19(10) of the new regulation only concern compensation. The right to assistance is addressed in Article 20 of Regulation 2021/782. The only connection between Article 20 and Article 19(10) is when there are circumstances referred to in Article 20(2)(b) sentence 2. In essence, where the railway undertaking is obliged under the right to assistance to provide the traveller with accommodation free of charge due to a delay or cancellation of a service, then in the case of circumstances referred to in Article 19(10) (that is the occurrence of these releasing causes), the railway undertaking may limit the duration of accommodation to a maximum of three nights. This means that apart from the case described above, the passenger has the right to full assistance provided for in Article 20 of Regulation 2021/782, which must be considered an appropriate solution.

The amount of the flat-rate compensation was left unchanged at 25% and 50% of the price of the ticket (Article 19(1) of Regulation 2021/782) where the railway undertaking may not be eligible to pay the compensation if such a price does not exceed the minimum threshold of EUR 4 per ticket (Article 19(8) of the Regulation).

#### 4. RIGHTS OF PERSONS WITH DISABILITIES AND PERSONS WITH REDUCED MOBILITY

Regulation 2021/782 undoubtedly improves the legal position of passengers with disabilities and passengers with reduced mobility. From the moment this Regulation enters into force (7 June 2023), provisions of Chapter V dedicated to such passengers<sup>26</sup> will apply not only to international and domestic carriage within the EU, but also to regional services (Article 2(8)).

A *novum* here involves granting the right to transport to personal assistants of persons with disabilities recognised as such in accordance with national practices (Article 21(1)) with the proviso that where the railway undertaking requires that the passenger should travel with such an assistant<sup>27</sup>, this assistant is entitled to travelling free of charge (Article 23(1)(a)). In other cases, he will travel with a special tariff or free of charge (Article

---

<sup>25</sup> See *Kolej w UE. Brak odszkodowań w przypadku "siły wyższej"*.

<sup>26</sup> Chapter V (Persons with disabilities and persons with reduced mobility) regulates, among other things, the question of the right to transport, of information given to persons, of assistance at railway stations and on board and of conditions under which it is provided, of compensation in respect of mobility equipment, assistive devices and assistance dogs and also of staff training.

<sup>27</sup> It may require this only where it is absolutely necessary in order to ensure compliance with availability laws.

23(1)(b)). At that, he should where practicable, be seated next to the person he assists.

What is also a novelty is the direct regulation of the question of transport of assistance dogs that may accompany persons with disabilities and persons with reduced mobility in accordance with any relevant national law<sup>28</sup> (Article 23(1)(c)).

Railway undertakings and station managers were given an obligation to ensure that all staff providing, in their regular duties, assistance to persons with disabilities and persons with reduced mobility or who deal directly with the travelling public, receive disability-related training and regular refresher training courses (Article 26).

The period in which the passenger should notify the railway undertaking, the station manager, the ticket vendor or the tour operator about him wishing to receive assistance, free of charge, at railway stations and on board, was reduced from 48 to 24 hours. Member States, however, may allow this period to be extended to 36 hours, but only until 30 June 2026 (Article 24(1)(a)).

Regulations concerning compensation due to such passengers in respect of mobility equipment and other assistive devices, including assistance dogs, were also extended (Article 25). Railway undertakings and station managers who caused the loss of, or damage to such equipment or the loss of, or injury to, assistance dogs will be liable as part of this compensation to cover the cost of replacement or repair of such device or costs of replacement or treatment of an assistance dog (without limits as to the amount that apply to another luggage) and also reasonable costs of temporary replacement of such devices or assistance dog where this replacement is not provided for by the railway undertaking or station manager and where they were immediately necessary.

The changes introduced above undoubtedly strengthen the rights of passengers with disabilities and rights of persons with reduced mobility. The provisions on compulsory staff training and those concerning assistants of persons with disabilities and assistance dogs, including the granting of compensation for the loss of or injury to such a dog, deserve a special praise. However, the literature rightly points out that a passenger who was granted a special right, e.g. as part of assistance in accordance with Article 21, may sometimes have a problem with deciding on who to file the claim with if they experience damage as a result of not being given assistance [Rott 2021]. Therefore, we should discuss the introduction of joint and several liability

---

<sup>28</sup> In Poland this question is regulated by Article 20a of the Act of 27 August 1997 on professional and social rehabilitation and employment of persons with disabilities (Journal of Laws of 2021, item 573 as amended).

of entities obliged to provide such assistance. An alternative, which might prove more difficult though, would be to introduce a strict separation of responsibilities between railway undertakings and the station manager.

It is regretful that provisions that grant specific rights to persons with disabilities and persons with reduced mobility do not stipulate directly the flat-rate compensation referred to in Article 19 or the right to assistance laid down in Article 20 (right to meals, refreshments and accommodation in the event of a delayed or cancelled arrival or departure) if the passenger does not board such a train or loses connection because they were not provided assistance pursuant to Article 21 at the train station or on board. Introduction of a flat-rate compensation here would make it much easier for passengers to pursue such claims as they would not have to evidence the amount of the damage, but only the fact that (due) assistance was not given to them. Therefore, it should be postulated that further amendments be made in this regard.

## 5. THROUGH-TICKETS

Regulation 2021/782 introduces a novelty, not stipulated in Regulation No 1371/2007, that is through-tickets,<sup>29</sup> which should be offered where long-distance or regional rail passenger services are operated by sole railway undertakings. Such companies should be understood as all railway undertakings which are either wholly owned by the same owner or which are wholly-owned subsidiary undertakings of one of the railway undertakings involved (Article 12(1)). For a journey covered with such a ticket, the passengers were granted rights stipulated in Article 18 (right to reimbursement of the cost of the ticket or to reroute), Article 19 (right to a flat-rate compensation) and Article 20 (right to assistance) of Regulation 2021/782, if they miss the next connection or connections.

Introduction of such a measure is praiseworthy. Through-tickets, as rightly pointed out in recital (22) of the preamble, allow passengers to travel seamlessly and their introduction as part of services provided by the same railway undertaking does not require any contracts (recital 22 of the preamble). On the other hand, founding the railway undertaking's liability on Article 18, 19 and 20 of Regulation 2021/782 is an encouragement for passengers to opt for travels with interchanges, as such travels are, as a rule, considered one journey.

---

<sup>29</sup> Pursuant to Article 3(9) of Regulation 2021/782, a 'through-ticket' means a through-ticket as defined in Article of Article 3(35) of Directive 2012/34/EU (see footnote 3), that is a ticket or tickets representing a transport contract for successive railway services operated by one or more railway undertakings.

## CONCLUSIONS

As seen in the comments above, a clear assessment of Regulation 2021/782 as a legislative act that rises the level of protection of passengers who use the services of railway undertakings is too optimistic. Undoubtedly, the situation of persons with disabilities and persons with reduced mobility will improve, though we should not expect far-reaching measures such as granting the right to a flat-rate compensation and the right to care where due assistance is not provided or improperly provided.

When it comes to all passengers who use the services of railway undertakings, measures relating to through-tickets and transport of bicycles are to their benefit. The latter, however, are not sufficient due too low norms for the number of places allocated to bicycles. This will not ensure implementation of the objectives of the new Regulation not only in reference to the protection of passengers but also in terms of the EU's climate policy.

The introduction of circumstances that release railway undertakings from the obligation to pay a flat-rate compensation clearly worsens the position of passengers, especially that these reasons are formulated using vague terms, which will undoubtedly bring numerous disputed in practice. However, on the other hand, it is difficult to question, as a rule, the existence of the foundation to introduce such exclusions. They also apply in other branches of transport. After all, the very fact of a certain approximation of regulations that concern protection of passengers in various branches of transport is without a doubt a positive development. The relevant literature has already pointed to the negative consequences of an unfounded differentiation of regulations and thus the level of protection of passengers in similar situations in various branches of transport [Wesołowski 2014].

## REFERENCES

- Ambrożuk, Dorota, Daniel Dąbrowski, and Krzysztof Wesołowski. 2020. *Prawo przewozowe. Komentarz*. Warsaw: Wolters Kluwer.
- Ambrożuk, Dorota, and Krzysztof Wesołowski. 2004. "Siła wyższa jako przesłanka zwalniająca przewoźnika od odpowiedzialności za stan przesyłki." *Zeszyty Naukowe Uniwersytetu Szczecińskiego* 423. *Problemy Transportu i Logistyki* 3, 125-37.
- Dąbrowski, Daniel. 2018. „Podstawy odpowiedzialności przewoźnika kolejowego za uszkodzenie ciała, rozstrój zdrowia bądź śmierć pasażera.” *Internetowy Kwartalnik Antymonopolowy i Regulacyjny* 7, no. 7:49-59. DOI: 10.7172/2299-5749.IKAR.7.7.4
- Góra, Ignacy, and Karol Kłosowski. 2018. "Nowelizacja przepisów rozporządzenia (WE) nr 1371/2007 Parlamentu Europejskiego i Rady dotyczącego praw i obowiązków pasażerów w ruchu kolejowym – najważniejsze projektowane zmiany." *Internetowy Kwartalnik Antymonopolowy i Regulacyjny* 7, no. 7:114-18. DOI: 10.7172/2299-5749.IKAR.7.7.10

- Kłosowski, Karol. 2014. "Siła wyższa nie wyłącza prawa co częściowego zwrotu ceny biletu. Glosa do wyroku TSUE z 26 września 2013 r. w sprawie C-509/11, ÖBB-Personenverkehr AG." *Internetowy Kwartalnik Antymonopolowy i Regulacyjny* 7, no. 3:112-20.
- Madrjas, Jakub. 2021. "Nowe prawa pasażera przyjęte! Już za kilka lat... prawie nic się nie zmieni". <https://www.rynek-kolejowy.pl/wiadomosci/nowe-prawa-pasazera-przyjete-juz-za-kilka-lat-prawie-nic-sie-nie-zmieni-102242.html> [accessed: 15.08.2022].
- Rott von, Peter. 2011. "Rechte von Menschen mit Behinderungen unter der neuen Eisenbahn-Passagierrechte-Verordnung." Post E1-2021. <https://www.reha-recht.de/fachbeitraege/beitrag/artikel/beitrag-e1-2021/> [accessed 14.09.2022].
- Stec, Mirosław. 2010. "Ochrona pasażera w transporcie kolejowym w świetle rozporządzenia (WE) nr 1371/2007 Parlamentu Europejskiego i Rady." In *Prawo handlowe XXI wieku. Czas stabilizacji, ewolucji czy rewolucji. Księga jubileuszowa Profesora Józefa Okolskiego*, edited by Małgorzata Modrzejewska, 969-85. Warsaw: Wolters Kluwer.
- Wesołowski, Krzysztof. 2014. "Konsekwencje sposobu unormowania ochrony pasażerów w prawie Unii Europejskiej." *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu* 362. *Zmiany prawodawstwa gospodarczego w okresie transformacji ustrojowej w Polsce*, edited by Tadeusz Kocowski, and Katarzyna Marak, 399-412.