

Commission's services position on

Reservation charges, Article 36 of Directive 2012/34/EU, in the event of force majeure

The topic has been discussed with the PRIME charges subgroup and internally at the European Commission. The Commission's services take the following position:

Force majeure in general:

- The definition of force majeure events is covered by international and national laws.
- Force majeure events are usually defined as certain acts, events or circumstances beyond the control of the parties to a contract. A party prevented, hindered, impeded or delayed from fulfilling its obligations by such events or circumstances is temporarily relieved from complying with them and avoids liabilities that would otherwise be associated with non-compliance. In general, a force majeure clause is inserted in the contract in order to determine what the consequences will be if such an events happens.

Force majeure in rail, steps to be taken by IMs:

- With regard to national and international train paths hit by force majeure events, points 7 and 8 of Annex VI to Directive 2012/34/EU, which refer respectively to "causes attributable to other railway undertaking" and "external causes attributable to neither infrastructure manager nor railway undertaking" give a placeholder of what can be classified as force majeure events.
- As regards the performance scheme under Article 35 of the Directive, IM have to :
 - classify „events caused by force majeure“ if those events have an effect on rail operation and
 - communicate the classification of these events to RUs and applicants.
- DG MOVE considers that in addition, to that, IMs should not levy reservation charges according to Article 36 of the Directive. This should be clearly indicated in the network statements of each IM.
- IMs should publish a list of force majeure events on their website to inform the RUs and applicants.
- For transparency reasons, IMs should refer in their network statements to the link on their website, which is continuously updated.
- IMs should communicate between themselves on force majeure events based on their cooperation under Articles 37 and 40 of Directive 2012/34/EU.
- Commission suggests that these procedures are taken up in the common template of RNE for network statements.

Steps to be taken by RUs:

- RUs have to inform all IMs concerned by their international train runs, when they consider that a force majeure event has happened and, where relevant, to communicate the classification made by the IM responsible for the railway infrastructure where this event occurred.
- If RUs communicate the occurrence of a force majeure incident to the following IM/IMs and is not comforted, but needs to pay for cancelling or for not operating the train, they shall address the national regulatory body.

Improved legislative framework:

- DG MOVE is prepared to work on a more precise list and to propose a revision of, *inter alia*, Annex VI, number 8, if this is to bring more clarity,
- Nevertheless,
 - national approaches to force majeure events in international and national laws are in place,
 - so that an immediate application of these best practices for international train runs shall not be delayed further.

DG Move is going to present its position at the various rail platforms like SERAC, RUD, PRIME and the ENRRB.