



European Railway Agency consultation paper

‘PASSENGER APPLICATIONS TELEMATICS TECHNICAL STANDARD FOR INTEROPERABILITY (TAP-TSI)’

TravelWatch SouthWest

TravelWatch SouthWest (TWSW) was established in 2001 as The South West Public Transport Users’ Forum (SWPTUF) to promote the interests of public transport users in the South West of England government region (comprising the counties of Cornwall, Devon, Dorset, Gloucestershire, Somerset and Wiltshire and the unitary authorities of Bath and North East Somerset, Bournemouth, Bristol, North Somerset, Plymouth, Poole, South Gloucestershire, Swindon and Torbay) – the Forum became a Community Interest Company, limited by guarantee, in August 2005. SWPTUF adopted the trading name of TravelWatch SouthWest in June 2006 and the Community Interest Company changed name to TravelWatch SouthWest CIC in November 2008.

Membership of the TravelWatch SouthWest CIC is open to every ‘not-for-profit’ organisation in the South West England government region whose sole or principal purpose is to represent the users of any public transport service or to promote the development of public transport services – membership is also open to other ‘not-for-profit’ organisations’ in the South West England government region who represent the interests of special and potential classes of public transport users e.g. the disabled or the elderly. TWSW currently has over ninety affiliated organisations.

TWSW, which is a social enterprise company, acts as an advocate for passengers to lobby for the improvement of public transport in the region and works closely with the South West Regional Assembly and with the South West Regional Development Agency – with the dissolution of the former Rail Passengers Committee for Western England in July 2005, TWSW is the sole representative body for public transport users throughout the South West England region. TWSW is currently funded by the South West Councils, South West Regional Development Agency, local authorities and a number of public transport operators.

Response to consultation

This response to the European Railway Agency consultation paper is based on responses from member organisations. TravelWatch SouthWest broadly welcomes the progress that has been made in developing the draft TSI. We consider that the establishment of a TSI for Passenger Applications Telematics has a significant potential contribution to make to making rail services easier to use and more attractive to passengers. This will

enhance the competitiveness of the rail system with other modes of transport. However, we have a number of detailed observations to make on Version 1.0 of the draft of the TSI with the document identifier ERA-029933, dated 28th January 2010.

Scope:

The scope of the TSI should cover domestic services, including local and regional services, as well as international services.

Our principal concern is that the TAP-TSI should cover domestic as well as international services. This is consistent with the principles that underlie Regulation 1371/2007 on the protection of passengers' rights and which forms one of the pillars of the Third Railway Package. It is also consistent with the provisions of Directive 2001/16 on the interoperability of the conventional rail system: Article 1(3) requires that the scope of the Directive shall be progressively extended to the whole of the conventional rail system (except for infrastructure and rolling stock reserved for a strictly local, historical or touristic use or infrastructure which is functionally isolated from the rest of the rail system and subject to a list of possible specified derogations that are listed in Article 7 of the Directive). The principle is reiterated in section 2 of Annex 1 of the Mandate to the Agency of 16th December 2005 which requires the ERA, in executing the Mandate to take into account the provisions of Article 1(3) of Directive 2001/16. Further, section 3.5 of Annex 1 of the Mandate to the Agency of 16th December 2005, which specifies the technical scope of the TAP-TSI obliges the TSI to take account of Regulation 1371/2007.

Article 2(1) clearly states that the Regulation shall apply to all types of rail journeys and services throughout the Community provided by railway undertakings licensed in accordance with Directive 95/18 on the licensing of railway undertakings. While it is true that member states may, under Article 2(4-5), grant exemptions from certain aspects of the Regulation, these exemptions are clearly specified and do not entitle member states to grant exemptions from the requirements of the Regulation as a whole. The all-embracing scope of the Regulation is reflected in Article 2(3) which specifies a number of Articles that applied to all railway services throughout the Community from the day that the Regulation entered into force. Although the Regulation makes no mention of the TAP-TSI (and does not need to since the requirements of section 3.5 of presume the development of the proposals contained in the Third Railway Package), it is apparent that the Regulation makes no provision for granting exemptions from the TAP-TSI.

The effect of an attempt by any member state to exempt any services in their territory from the provisions of the TAP-TSI would be to deny its benefits and the rights of people living in compliant member states to the full related benefits of the Regulation. Information of the sort listed under the heading 'Information to be Provided to Passengers' in the Annex to Annex 1 of the Mandate to the Agency of 16th December 2005 needs to be available for all services throughout the European Union. If a member state, which has decided to exercise exemptions, also did not require its licensed railway undertakings to comply with the provisions of the TAP-TSI relating to domestic passenger services, passengers living in those member states who have decided not to make derogations from the Regulation will be denied the full range of information to which they are entitled and thereby have their rights under European law diminished. If a licensed railway undertaking in member states that had decided under Article 2(4-5) of the Regulation to exempt its domestic services failed to provide the information to passengers required under the TAP-TSI the effect would be to deny passengers in member states that were compliant with the full provisions of the Regulation the wider benefits to which they were entitled. The effects of derogation by one member state, in such circumstances, would be to diminish the rights to passenger information of citizens in those member states who had decided not to make exemptions from the Regulation. This would be inequitable.

1. Compatibility with EU Consumer Policy

The provisions of the TAP-TSI should reinforce European Consumer Strategy: passengers need easily accessible, clear and timely information in order to make informed choices.

The preamble to the EU's *Consumer Policy Strategy 2007-2013* makes a particular point that “confident, informed and empowered consumers are the motor of economic change as their choices drive innovation and efficiency” and that consumers can connect the EU to the daily lives of citizens most directly, thereby demonstrating the Union's benefits. Easy access to the full range of clearly presented and timely data is essential if passengers are to make informed choices. Unfortunately, the present draft of the TAP-TSI includes a number of restrictive clauses that are incompatible with this important policy. This is particularly surprising given the additional prominence given to consumer protection under Article 12 of the new consolidated Treaty on the Functioning of the EU and the requirement that it must be taken into account in defining and implementing other Union policies and activities. For example, Section 4.2.1 of the draft TAP-TSI implies that access to information on timetable data will be restricted to Railway Undertakings or to ‘third parties authorised to receive data’. Section 4.2.2.1 compounds this potentially anti-competitive and anti-consumer approach by limiting access to tariff information similarly. The general approach to access to intellectual property which is essential to informed decision making by passengers and potential passengers is unduly restrictive: it is impossible to see why the detail of Timetable data (which includes detail of the services being provided and the relationship to other services) together with Tariff data should not be made accessible on a fair dealing basis. If enacted, it would result in a 'closed-shop' approach to data provision; this would be indefensible and echo the worst practices of railway undertakings. This ‘closed shop’ approach is indefensible and echoes the worst practices of railway undertakings. Section 2.7.1 of Annex III of Directive 2008/57 on the interoperability of the rail system requires the ERA to take steps to ensure that the TAP-TSI provides easy access to information to users with the maximum data interchange, rightfully subject to allowing for the exclusion of genuinely confidential commercial data.

2. Access to Information

There should be provision for the full range of information on Timetables (including detail of the services being provided and the relationship to other services) and Tariffs to be available to passengers and potential passengers through a single, impartial, electronic portal.

All relevant data necessary to empower consumers to make informed decisions about a journey should be accessible through a single electronic portal. We note that Article 28 of Regulation 1371/2007 designates the Internet website of the ERA as a collective source for the railway undertakings' mandatory reports on service quality performance. We note that the ERA could impartially oversee provision of such an electronic portal for the Timetable and Tariff information deriving from the TAP-TSI.

3. Enforcement

The TAP-TSI lacks appropriate enforcement provisions.

We are concerned that the draft TAP-TSI relies unduly on the goodwill of railway undertakings for effective implementation. For example, Section 4.2.1.1 requires merely that railway undertakings shall provide Timetable data that is of reasonable quality and timeliness. The metrics of these requirements do not appear to be specified and there appears to be no mechanism proposed for determining conformity or resolving disputes. A similar weakness is apparent in relation to the Strategic European Deployment Plan (SEDP) that is the subject of Section 7 of the TAP-TSI.

4. User engagement in the Strategic European Deployment Plan

The SEDP makes no provision for input from passengers' representatives to its work although it is proposed that the 'supply' side (Railway Undertakings, Infrastructure Managers, Station Managers and Ticket Vendors) should be well represented.

The omission of passenger input to the SEDP is inconsistent with the principles set out in Recital 3 of Regulation 1371/2007 about the need to safeguard passengers' rights as the weaker party to the passenger contract and with Recital 28 of Directive 2008/57 about the need to consult users on TSIs and, specifically, Article 6(7) which obliges the ERA to consult associations and bodies representing users not just during the drafting but during any review of the TSI in relation to those characteristics which may have a direct impact on the conditions in which they use the sub-systems.

5. Defined terms

We are concerned that the Glossary of Terms accompanying the draft TAP-TSI needs a lot more work if its inclusion is not going to cause counter-productive confusion.

The Glossary of Terms needs thorough review and amendment both as to the extent of the terms covered and for the way in which those terms are defined. For example, the present definition in the draft TAP-TSI of 'Transport Service' could have the effect of excluding from the provisions of the TAP-TSI any service provided in accordance with Regulation 1370/2007 on public passenger transport services (i.e. services where there is specific financial intervention by a public authority, either positive or negative, in the services provided by an undertaking that would have been unlikely to have provided in that manner had the provision been left entirely to market forces). This is just one example of the potential perils of the present Glossary. It requires a full analysis and re-evaluation.

6. The interests of Cyclists and People of Reduced Mobility.

We support the general approach adopted by the TAP-TSI since we believe that it sits adequately with the principle of providing essential information for all customers. We regard it as particularly important that PRMs should be able to have additional confidence that the facilities that they have booked will be provided. However, we are concerned that the arrangements should not solely be dependent on access to IT systems; we believe that phone-booked assistance could equally easily be adapted to generate the necessary reference number. We also think that it is important that any request for assistance should be drawn to the attention of train staff and station staff, as appropriate, at both the station of departure and that of arrival (and at any intermediate connection points).

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