

Preparation of a code of conduct for a mobility service network

Consumer and data protection and liability issues

Legal analysis, prepared by Dittmar & Indrenius

English translation commissioned by FICORA (prepared by AAC Global)

Contents

1. Background and objectives of the analysis
2. Main conclusions
3. Consumer protection and passenger rights
4. Liability issues between stakeholders
5. Personal data protection

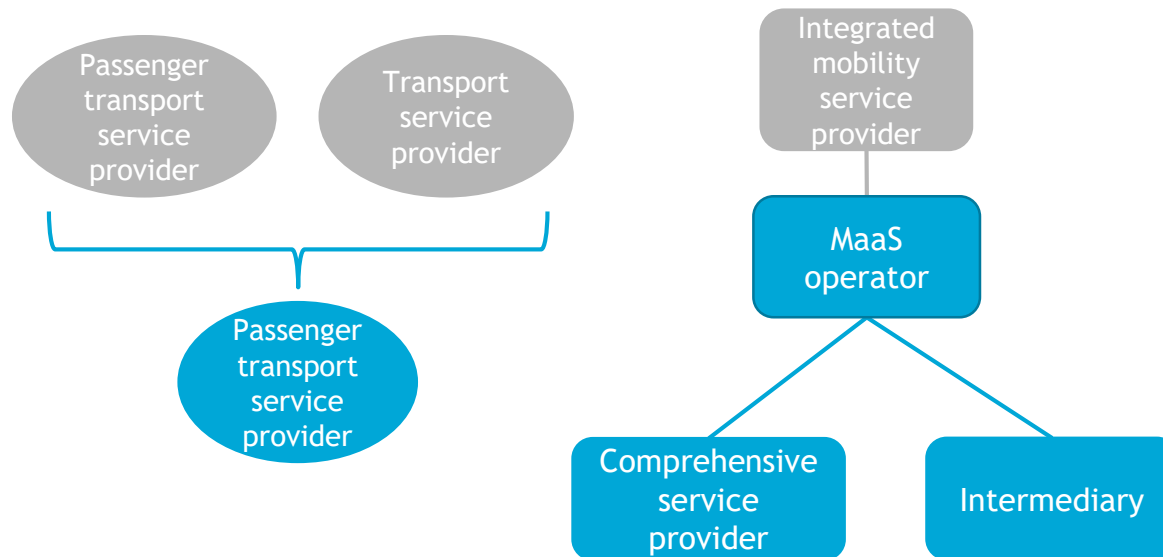
1 Background and objectives of the analysis

- This presentation contains the key results and findings of the legal analysis prepared by Dittmar & Indrenius (“D&I”) at the request of the Finnish Communications Regulatory Authority (FICORA).
- A new version of the code of conduct for a mobility service network (“MSN”), prepared on the basis of the results of the analysis, is included in a separate document dated 13 October 2017 (“draft code of conduct”).
- The purpose of the analysis is to provide FICORA with a practical and concrete description of MSN-related consumer and data protection and damage compensation issues to support the preparation of the code of conduct for a mobility service network. This analysis focuses on these issues solely from the perspective of road and rail transport.
- This presentation is not intended as an exhaustive description of all issues related to the topic at hand. The analysis reflects the current legislative environment, but the court of justice has the power of interpretation on the issues falling within the scope of the analysis.
- The analysis is based on generally available information on the topic, the background information presented by FICORA to D&I, the issues raised by the MSN stakeholders at workshops on 12 September and 10 October 2017, and the legal analysis prepared by D&I in February 2017 for the Ministry of Transport and Communications on the regulation on passenger rights and consumer protection.

Definitions in the analysis

- “MaaS operator”
 - A business operator which provides Mobility as a Service (“MaaS”) using data and digitalisation (such as open interfaces) on its own behalf or on the behalf of a passenger transport service provider, making available to passengers the opportunity to acquire travel chains that combine different modes of transport.
 - Since there are no legally imposed responsibilities under the Act on Transport Services, this analysis does not refer to the definitions of the Act to enable a clearer determination of responsibility relations between stakeholders.
- “Passenger transport service provider”
 - A business operator providing passenger transport services, such as a rail company.
- “Passenger”
 - A natural person who uses a passenger transport service.
- “Travel chain”
 - An uninterrupted period of transition from the place of departure selected by the passenger to the destination selected by the passenger, during which the services of at least two different transport service providers are employed.
- “Special regulations on each mode of transport”
 - National and European Union regulations as well as international agreements legally binding for transport service providers, aimed at safeguarding passenger rights for any individual mode of transport.
- “Regulation on passenger rights”
 - Regulation safeguarding passenger rights, including consumer protection regulation and special regulations on each mode of transport.
- “Disabled passenger or passenger with reduced mobility”
 - A person whose mobility when using transport is reduced due to any physical or intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and the adaptation of the service to his or her particular needs.
- “Accessibility”
 - Usability and availability of infrastructure and the physical environment as well as devices, software and services.
 - For the purposes of this presentation, this also includes the assistance obligations under the special regulations on each mode of transport.

Definitions in the analysis



- Terms in the Act on Transport Services
- Terms in the D&I Analysis



* As the analysis only deals with travel chains combining several modes of transport, the brokering and dispatch service provider does not belong to the scope of this analysis.

2 Main conclusions

- Communication to passengers at all stages of a travel chain is essential.
 - To guarantee the rights of passengers and a successful travel chain, it is essential for the parties of a travel chain to be aware of their role and position within the chain and agree on which practical arrangements will allow information to be exchanged between stakeholders and finally delivered to the passenger during the entire life cycle of the travel chain.
- There is a wealth of regulation on passenger rights, but there are essential shortcomings with respect to travel chains. To safeguard the position of the consumer, parties should agree on the matters where legislation is not clear.
 - From the consumer perspective, it is vital to have unambiguous claims and compensation practices.
 - Smooth practices must be created for providing information and assistance to customers in case of a travel chain incident.
 - Parties must work together to guarantee the rights of disabled passengers and those with reduced mobility.
- The package travel regulation currently under preparation would, if applicable, have a considerable impact on the status of MaaS operators.
- In the absence of an agreement, liability relations between parties may remain unclear.
 - Parties may agree on their mutual liabilities rather freely, while bearing in mind that the legal position of a passenger may not be undermined.
- As personal data is regularly processed within a MSN, stakeholders must comply with data protection regulations.
 - The definition of personal data is extensive, and a major share of the data processed within a MSN is thus considered to be personal data.
 - It is important for the stakeholders to understand their role either as data controllers or data processors, because these roles involve various liabilities and obligations.

3 Consumer protection and passenger rights

Parties in a travel chain

- The regulations applicable to travel chains depend considerably on the position and role of the travel chain parties:
- Passenger
 - Passengers' rights essentially depend on whether they are [consumers](#) or [business travellers](#).
 - Where the passenger is a consumer, both the passenger transport service provider and the MaaS operator are businesses within the meaning of the Consumer Protection Act.
- Passenger transport service provider
 - Liabilities of a passenger transport service provider are largely determined by the [special regulations on each mode of transport](#)- irrespective of whether the passenger has purchased the ticket from a MaaS operator or the passenger transport service provider itself.
- MaaS operator
 - The legal status of a MaaS operator does not come directly from the special regulations on each mode of transport, but [depends on the scope of the service provided, the role of the passenger and the mutual contractual relations of the parties](#).
 - Depending on the circumstances, a MaaS operator may be, for example, a comprehensive service provider, an intermediary, a tour operator or a provider of a linked travel arrangement.
- The factors affecting the determination of the role of a MaaS operator will be discussed below in more detail.
 - Depending on the nature of its operations, the role of a MaaS operator may also be a hybrid between those discussed here.
 - The position of a MaaS operator depends, in addition to actual circumstances, also on how it markets its services to consumers and what can be deemed to have been agreed with it.

Possible roles of a MaaS operator

Depending on the circumstances, a MaaS operator may have one of the following roles:

Comprehensive service provider

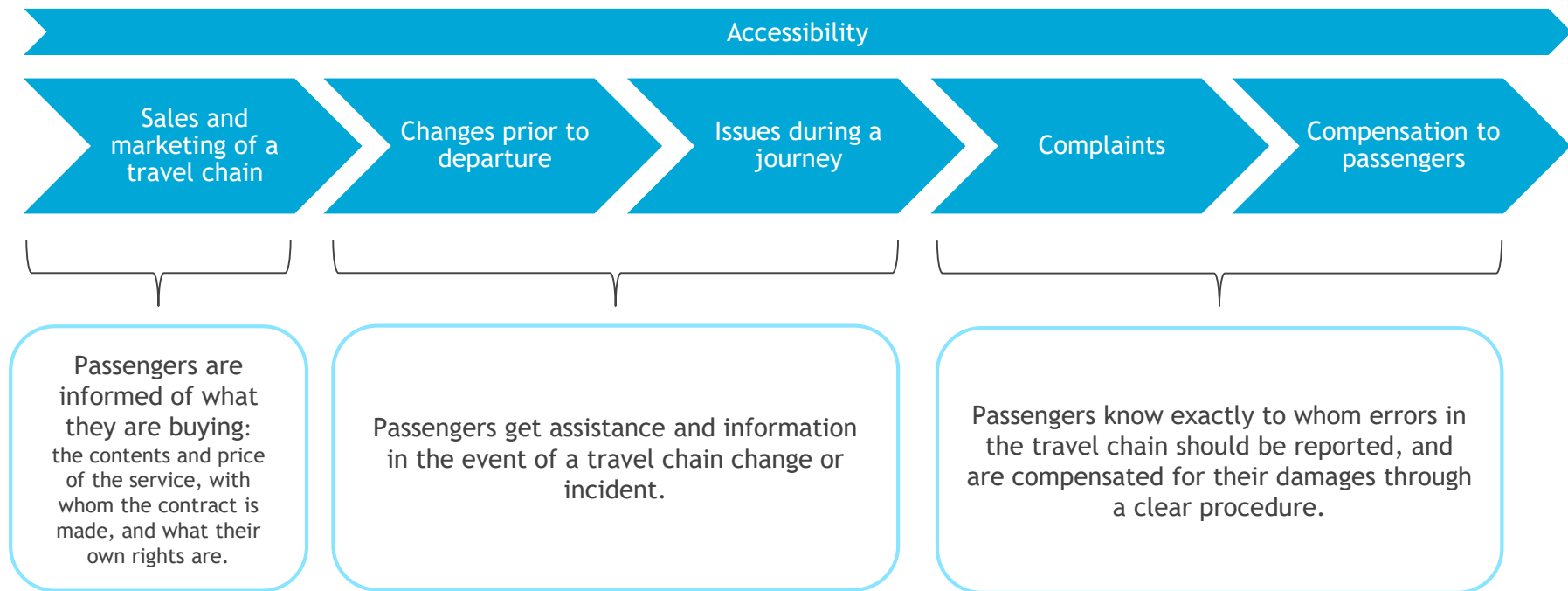
- When the MaaS operator and the passenger enter into an agreement on the performance of a transport operation.
- In this case, a MaaS operator would have a direct contractual relationship with the consumer and use independent passenger transport service providers to assist itself in the performance of the contract (“subcontractors”), being responsible for their performance as it would be for its own.
- A comprehensive service provider is responsible for the completion of the entire travel chain.

Intermediary

- When a MaaS operator mediates transport contracts, but does not conclude them on behalf of either party.
- An intermediary intends to bring together potential contractual parties and mediate their expressions of intent.
- A contract is concluded directly between the seller and the final buyer.
- An intermediary is not a party to the contract and is not responsible for its performance.

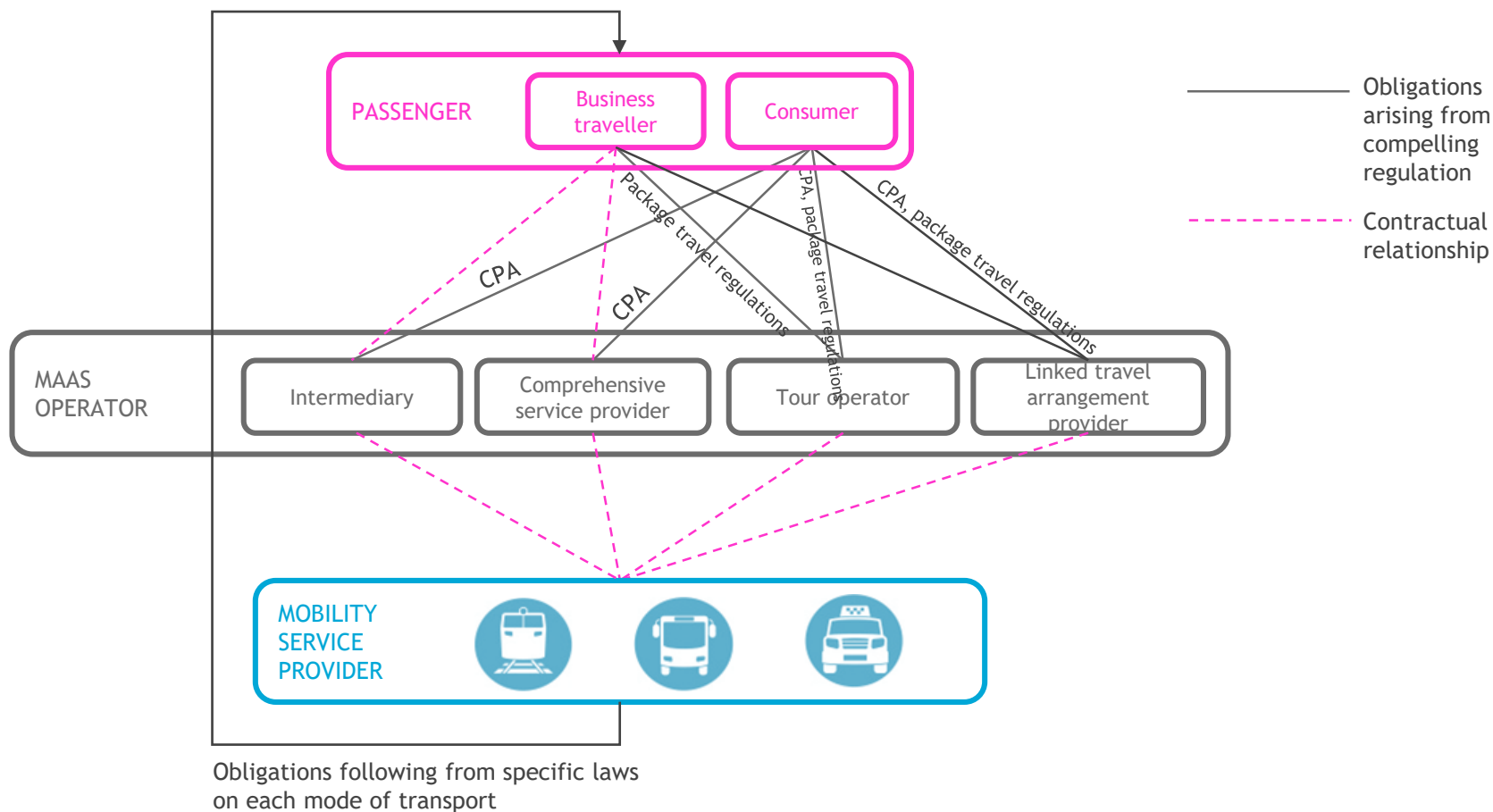
Note: Under chapter 12, section 1 of the Consumer Protection Act, an intermediary shall be liable towards the consumer acquiring the goods or services for the fulfilment of the contract in accordance with chapters 5 and 8 of the Consumer Protection Act and section 41 of the Sale of Goods Act. Such liability shall, however, not arise if the intermediary acts on behalf of another business and if the consumer, at the time of entering the contract, is aware of this and the effect of this fact on his rights. It is not clear whether this provision applies to MaaS operators.

The most relevant aspects for the protection of the passenger



Overview of passenger rights

- There are no specific regulations on the protection of passengers in travel chains.
- Factors affecting the passenger rights in a travel chain may include:
 - [Special regulations on each mode of transport.](#)
 - EU regulations are not uniform, and compensation principles and other details vary between modes of transport.
 - Mainly obligatory to transport service providers.
 - [Consumer Protection Act \(“CPA”\)](#), if the passenger has the status of a consumer.
 - [Act on travel service combinations](#) (*in preparation, expected to enter into force on 1 July 2018; before this, see Package Travel Act (1079/1994)*).
 - [General principles of contract and consumer law.](#)
 - The principles apply when there are gaps in the special regulations on each mode of transport.
 - General principles have particular importance in the event of a fault in service, because special regulations on each mode of transport do not contain provisions that would comprehensively cover errors.
- A passenger transport service provider and a MaaS operator may agree on their mutual liabilities rather freely, but it is not possible to [contractually limit or exclude the passenger rights provided for](#) in EU and national legislation.
 - If an EU regulation provides for a certain obligation of a transport service provider, a passenger must be able to seek help from it irrespective of the mutual sharing of responsibilities between the MaaS operator and the passenger transport service provider



27 October 2017



Sales and marketing of a travel chain -

Overview of the information to be provided to passengers

- When travel chains are marketed to consumers, particular attention must be paid to the specific provisions of the CPA on disclosure obligations and marketing.
 - Marketing must clearly show its commercial purpose and on whose behalf the marketing is implemented. Relevant information must not be omitted and misleading information must not be given in the marketing (for more details, see chapter 2 of CSA).
 - According to the Consumer Protection Act, certain information must be provided to consumers when marketing a travel chain or, at the latest, before a contract is concluded.
- An MaaS operator is responsible for following these rules in its operations even if it only has the position of an intermediary
 - On the other hand, a passenger transport service provider may be held responsible for the appropriateness of the marketing carried out by the MaaS operator because the marketing of an MaaS also involves the marketing of the passenger transport services provided by a passenger transport service provider.
- Legislation on disclosure obligations is fragmented and case-specific: disclosure obligations vary between modes of transport and according to the roles of the MaaS operator and the passenger.
 - In addition to the Consumer Protection Act, disclosure obligations are also included in the following:
 - [Special regulations on each mode of transport](#) (obligations mainly concern transport service providers, although certain disclosure obligations also apply to the MaaS operator, if it is *a ticket vendor*, a *tour operator* or a *travel agent* within the meaning of the regulation)
 - [Act on Transport Services The](#) (in force from 1 July 2018; before this, see, for example, the *Taxi Transport Act 217/2007*)
 - [Act on travel service combinations](#) (in preparation, expected to enter into force on 1 July 2018; before this, see *Package Travel Act (1079/1994)*)
- The following table describes the key statutory disclosure obligations of a MaaS operator when it assumes the role of an intermediary or a comprehensive service provider. The information has been classified according to the stage where it must be disclosed to the passenger.
 - The information that the MaaS operator must disclose irrespective of the mode of transport is listed on the left; the disclosure obligations of the MaaS operator arising from special regulations on each mode of transport are listed on the right.

Disclosure obligations of an MaaS operator

Available on the website

Information specified in the Act on Transport Services on:

- the service and the operating area,
 - any changes and cancellations of the services,
 - whether the services are subject to a licence,
 - the total price or the basis for its calculation,
 - payment methods,
 - how customer feedback may be provided,
 - services for disabled passengers and the accessibility of the provided services (Act on Transport Services, Part III, chapter 1, section 1)*
- In addition, information on the dispute resolution body and its website address (CPA, chapter 2, section 8b)



Conditions of carriage for rail transport (Rail Transport Act, section 6)



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In case of pre-ordered transport, the service price list may be available on a website (Act on Transport Services, Part III, chapter 1, section 3)*

Pre-contractual information

At least the following information must be disclosed to consumers:

- the main characteristics of the product
 - the name of the company
 - the product price and any delivery costs or other additional charges
 - the right to cancel or terminate a contract
 - the duration of the contract
 - practices concerning payment, delivery or performance of the contract
- In addition, it should be ensured that the consumer expressly accepts the obligation to pay and gives his or her consent to additional charges.



On request, the information referred to in Articles 8 and 20 of Regulation (EC) No. 1371/2007 on rail passengers' rights ("PRR Regulation") and obligations concerning the terms applicable to the contract and the on-board arrangements offered to disabled persons or persons with reduced mobility



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Information on the price of a taxi service or the basis for calculating the price, if the MaaS operator is an intermediary service provider within the meaning of the Transport Services Act (Act on Transport Services, Part III, chapter 1, section 3)*

(For more details, see CPA, chapter 2, sections 8 and 10a and chapter 6, section 12)

** Valid from 1 July 2018.*

See also the Government Decree on essential information on mobility services (7.9.2017/643)

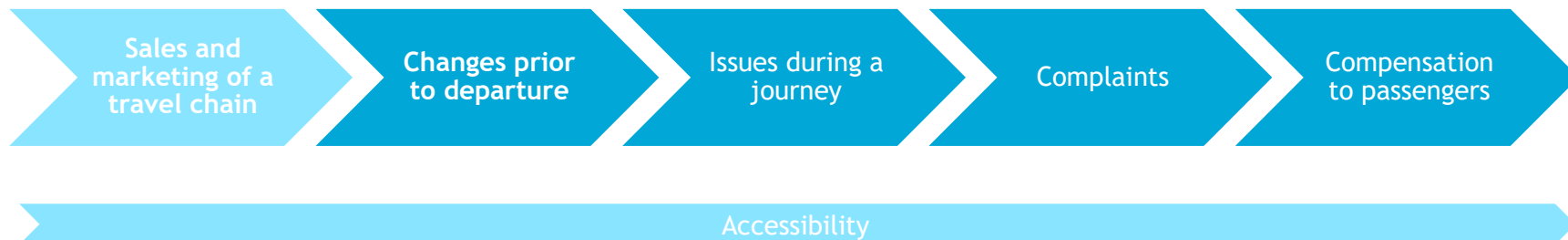
To be considered in contracts between the stakeholders

Sales and marketing of a travel chain

- It is important for the MaaS operator to **identify its role and position in the travel chain** and communicate this arrangement clearly and unambiguously to passengers so that they know who they are in a contractual relationship with.
 - The MaaS operator should communicate its role and its liability impact clearly to the customer, because it is not certain whether the liability of intermediary within the meaning of chapter 12, section 1 of the CPA will be excluded in the event of an ambiguity.
- To enable passengers to obtain all necessary information when purchasing a travel chain, and to save the passenger transport service provider from separately informing the customers, **it might be appropriate to concentrate all disclosure obligations related to sales to one party** - possibly the MaaS operator.
 - In this case, it should be agreed that this party is responsible for the performance of the disclosure obligations under the CPA and any overlapping disclosure obligations and also provide the passenger with information falling within the responsibility of the passenger transport service provider.
 - **The MaaS operator must understand that this agreement would expand its scope of responsibility**
 - Parties should also agree that each party is responsible for the appropriateness of its own terms and for emphasising unexpected or strict terms.
- When agreeing on transferring the obligations under the CPA or the special regulations on each mode of transport from the passenger transport service provider to the MaaS operator, it should be taken into consideration that **a passenger has, in any case, always the right to seek help from the passenger transport service provider**.
 - Processes should be agreed to ensure that pricing information and other details are appropriately disclosed.

CHECKLIST

- ❑ The MaaS operator must inform passengers about its intermediary position and what this means for the completion of the travel chain.
- ❑ The MaaS operator must ensure that passengers accept the general conditions applicable to the travel chain, corresponding to the latest regulatory requirements on the content of the contract and the disclosed information.
 - ❑ Information disclosure obligations under the CPA:
 - ❑ Passenger rights
 - ❑ Conditions of carriage and a notification of any unexpected or strict terms
 - ❑ Procedures in the event of a customer complaint
- ❑ The ticket must contain the necessary information.
- ❑ Agreement on communication procedures.
- ❑ How can the MaaS operator obtain information about any changes made in information provided for passengers?



Changes and incidents in the travel chain

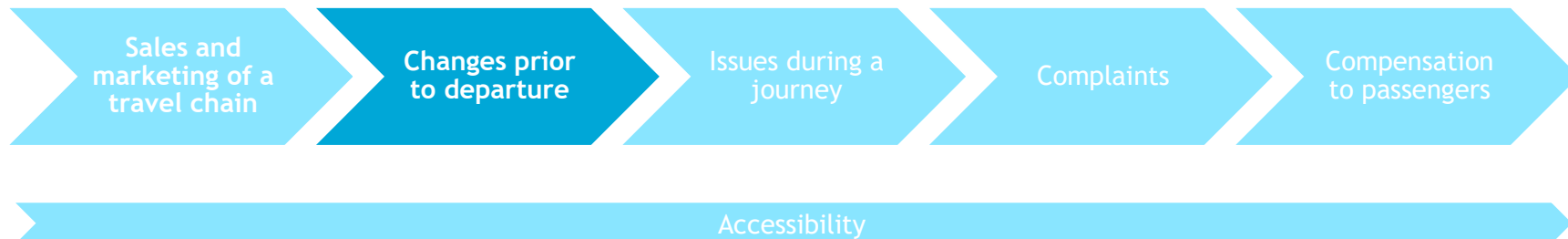
This section deals with the obligations and the division of operational responsibilities between the travel chain parties in case of an incident.

1. Overview of changes and incidents in a travel chain
2. Changes prior to departure
 - i. Communication on changes
 - ii. Re-routing of a travel chain
3. Issues during a journey
 - i. Issues with travel identifiers
 - ii. Travel chain breakdown due to a delay
4. Complaints to do with travel chain failures
 - i. Correct complaint recipients
 - ii. Recommendations to improve the complaint procedures for consumers
5. Compensation for passengers
 - i. Contractual liability in the event of a failure according to the general principles
 - ii. Responsibility for travel identifier issues
 - iii. Transport service provider responsibility in the event of delay
 - iv. MaaS operator responsibility in the event of delay
 - v. Public transport ticket as part of the travel chain

Changes and incidents in the travel chain

General

- Special regulations on each mode of transport stipulate some operational obligations for passenger transport service providers in case of an incident during an individual journey, but there are no special regulations concerning the impact of disturbances on travel chains.
 - Special regulations on each mode of transport do not provide appropriate protection to passengers throughout travel chains because obligations concerning re-routing and communications, for example, usually only apply to the section of the travel chain completed by the passenger transport service provider itself.
- Special regulations on each mode of transport stipulate [standard compensation obligations](#) for transport service providers, covering events such as delays.
- Special regulations on each mode of transport contain some provisions on compensation for damages but they do not comprehensively cover service faults. For this reason, [the general principles of contractual and consumer law](#) have major importance in the event of a fault in the service.
 - If there is a fault in a service, a passenger has, under general principles of contractual law, the right to demand the failure to be remedied or compensated for.
 - In this case, the passenger may, depending on the situation, have the right to demand the contract to be fulfilled, refrain from payment, demand a price reduction or a contractual remedy, or terminate or cancel the contract.
 - In this analysis, we deal in more detail only with the passenger's right to claim damages.



Changes prior to departure -

Communication on changes

- If a part of a travel chain is cancelled prior to departure, it is important for passengers to be informed of the cancellation and how the cancellation of one section of a travel chain affects the other transport operations of the chain.
- While the special regulations on each mode of transport and the Act on Transport Services contain some communication obligations, they **do not oblige anyone to inform the passenger how the travel chain will be completed after a cancellation.**
 - In rail transport, a passenger transport service provider must communicate cancellations - under Commission communication 2015/C 220/01 rules on delays also apply to cancellations.
 - In coach transport, for routes exceeding 250 km, a transport service provider must communicate a cancellation or a delay to all passengers and inform them of alternative connections if the passenger has asked for such communication and provided the necessary contact details.
 - Pursuant to Part III, chapter 1, section 1 of the Act on Transport Services, an MaaS operator and a passenger transport service provider should ensure that information on changes and cancellations are available online, but there are no provisions concerning the obligation to inform passengers (entry into force on 1 July 2018).
- In the provision of travel chain services, it is not necessarily adequate from the perspective of passenger protection if a passenger transport service provider communicates only the cancellation of a train or bus departure included in the section that it performs itself.
 - If one section of a travel chain is cancelled, the other sections of the chain may also be rendered useless.
 - Even if passengers are informed of the cancellation of a departure, they will not know what this means for the completion of other sections of the travel chain.

Changes prior to departure -

Re-routing of a travel chain

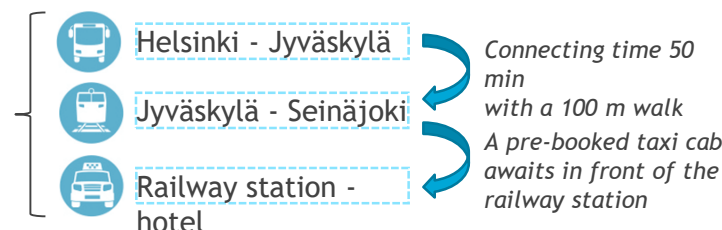
- If it seems that a travel chain can no longer be completed due to the cancellation or schedule change of one transport operation, customers require the re-routing of the entire travel chain.
- Under the re-routing obligations contained in the special regulations for each mode of transport, the [passenger transport service provider](#) must re-route the passenger **only until the end of the section covered by its own mode of transport** - i.e. not until the end of the entire travel chain.
 - Such a statutory re-routing obligation does not apply to all modes of transport (coach routes of less than 250 km, taxis, local trains).
 - Pursuant to communication 2015/C 220/01 of the Commission, the re-routing obligations of the PRR Regulation are applied to cancellations of departures.
- **An MaaS operator has the obligation to re-route a passenger to the travel chain destination only when it is the [comprehensive service provider](#).**
 - The obligation of the comprehensive service provider is based on general contractual law principles concerning service faults.
- Passengers purchasing travel chains through an MaaS operator that acts as an [intermediary](#) have to ensure the completion of the travel chain themselves.

Example

A consumer passenger has purchased a travel chain using an application by an MaaS operator.

Prior to departure, the *coach is cancelled* and the travel chain cannot be completed.

What are the obligations of the *MaaS operator*?



PROVISION OF
INFORMATION
ON NEXT LINKS
OF THE TRAVEL
CHAIN

Intermediary

NO statutory
obligation to provide information on the impact
of the cancellation on the travel chain

RE-ROUTING

NO
re-routing obligation

Comprehensive service provider

No statutory obligation to provide information on
the impact of the cancellation on the travel
chain, but is *responsible for the completion of
the travel chain*

*Obligation to re-route
the entire travel chain
to the final destination
(unless this is not reasonable)*

To be considered in contracts between the stakeholders -

Foreseeable changes and incidents

- To allow passengers to be informed, as clearly as possible, of any cancellations and their impact on the other sections of a travel chain, parties should agree on communication practices in the event of foreseeable changes and incidents.
 - In the service provision of an MaaS, it is not necessarily adequate from the perspective of passenger protection if a passenger transport service provider only communicates the cancellation of a train or bus departure included in the section that it performs itself.
 - A passenger transport service provider is not aware of the other sections of the travel chain, while the MaaS operator, acting as an intermediary, does not have any obligation to provide information on how the cancellation affects the travel chain.
- As the comprehensive service provider, the MaaS operator may have the obligation to re-route the entire travel chain because of a cancellation or delay of one section.
 - It may be necessary for the parties to agree on the right of the MaaS operator to cancel or exchange tickets that such changes would render useless and agree on the responsibility of the passenger transport service provider for the MaaS operator on foreseeable changes.
 - Cancellations affect the service of the MaaS operator, but are beyond its control.
- Parties may not compromise the statutory rights of a passenger through their agreement.

CHECKLIST

- ❑ Who informs passengers of cancellations of scheduled departures and what this means for the completion of a passenger's travel chain?
- ❑ Procedures for foreseeable cancellations - which party communicates the change to the other parties of a travel chain?
- ❑ If one section of a travel chain is cancelled, is the passenger allowed to cancel the entire chain?
- ❑ If a section of a travel chain is cancelled, is the MaaS operator permitted to cancel the tickets of other transport service providers and re-route the entire journey on behalf of the passenger?
 - ❑ What are the mutual responsibilities of the parties for a cancelled ticket that affects the service of an MaaS operator?
 - ❑ Cancellations by a passenger transport service provider are beyond the control of the MaaS operator.



Issues during a journey -

Issues with travel identifiers

- A travel chain may break unexpectedly during journey, if a passenger's travel identifier does not work for one reason or another and the passenger cannot board a means of transport.
- Issues with travel identifiers may be caused by many reasons - such as an incident related to the service of a MaaS operator, a delay in delivering the travel identifier to the passenger, a human error during the booking procedure or the failure of a ticket validating machine of a passenger transport service provider - [but it may be difficult to identify the responsible party in the situation.](#)
- A passenger transport service provider generally has no obligation to let a passenger board without a valid ticket, at least not without a surcharge.
- It would be important for the parties to agree on the arrangements in the event of the failure of a travel identifier and [inform passengers of who they should contact if their travel identifier does not work.](#)

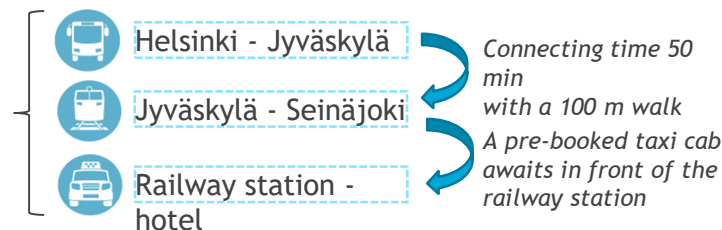
Issues during a journey -

Travel chain breakdown due to a delay

- Due to a delay in one section of a travel chain, a passenger may miss the next means of transport and the travel chain is broken. In such a case, it would be important for passengers to know whether they themselves should ensure that they reach their final destination, or whether one of the parties of the travel chain will re-route the journey until the final destination without any extra cost.
- In the event of a delay, special regulations on each mode of transport set out obligations concerning re-routing and the duty of care for the [passenger transport service providers](#), but these do not require that the entire travel chain must be re-routed.
 - For coach routes exceeding 250 km, the driver must offer re-routing or a refund of the ticket price, if the delay exceeds 2 hours.
 - In rail transport, re-routing or a refund of the ticket price must be offered if it may be expected that the delay exceeds 60 minutes.
 - No re-routing obligations have been set for coach routes of less than 250 km or for taxis, local trains or tramways, and the obligation does not exist for other means of transport, either, if the delay is less than the statutory time limit.
 - The re-routing obligations of a passenger transport service provider only help the passenger to reach the destination of the current leg of the journey; the rest of the travel chain is not re-routed.
- An MaaS operator in the position of a [comprehensive service provider](#) may have [the obligation to re-route the entire travel chain](#) on the basis of general contractual law principles concerning service faults, if the passenger demands the contract to be performed.
 - There is no obligation to re-route if it would be unreasonable to do so.
 - This means that while the re-routing obligations of the special regulations for each mode of transport do not apply to the MaaS operator in this case, the re-routing obligation arises, because the passenger has the right to demand that the contract is performed.
- An MaaS operator in the position of an [intermediary](#) is not, in principle, responsible for faults occurring in the passenger transport service and does not have a re-routing obligation.

Example 1

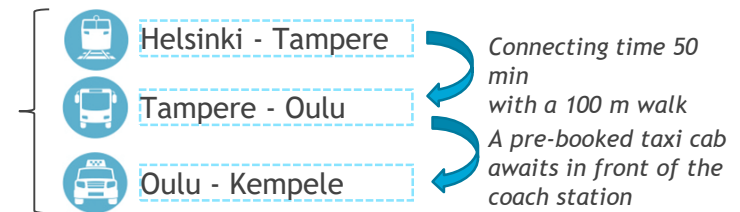
A consumer passenger has purchased a travel chain using an application provided by an MaaS operator. Prior to departure, it occurs that the *coach will be delayed* and the travel chain cannot be completed. What are the obligations of the *MaaS operator*?



	Intermediary	Comprehensive service provider
PROVISION OF INFORMATION ON LATER STAGES OF THE TRAVEL CHAIN	<u>NO</u> obligation to provide information on the impact of the cancellation on the travel chain	No statutory obligation to provide information on the impact of the cancellation on the travel chain, but is <i>responsible for the completion of the travel chain</i>
RE-ROUTING	<u>NO</u> re-routing obligation	<i>Obligation to re-route the entire travel chain to the final destination (unless this is not reasonable)</i>

Example 2

A consumer passenger has purchased a travel chain using an application provided by an MaaS operator. At the train station, it occurs that *the train is delayed for 55 minutes*, and the passenger will miss a coach that leaves from Tampere in 50 minutes. What should the parties do?



An MaaS operator as an intermediary

Obligations of the rail company:

- Must communicate the delay and the estimated schedule
- No obligation to offer re-routing even to Tampere or a refund of the ticket price, because the delay is less than 60 min

Obligations of an MaaS operator:

- No obligation to re-route or provide information on the next links of the travel chain

➡ The passenger situation is the same as it is when the services are purchased separately and passengers must find out themselves how to get to the destination.

As the comprehensive service provider

Obligations of the rail company:

- Must communicate the delay and the estimated schedule
- No obligation to offer re-routing even to Tampere or a refund of the ticket price, because the delay is less than 60 min

Obligations of an MaaS operator:

- If the passenger so requests, the MaaS operator must try to arrange the journey to Kempele by alternative means, unless it would be unreasonable to do so.

➡ The MaaS operator re-routes the passenger to the destination.

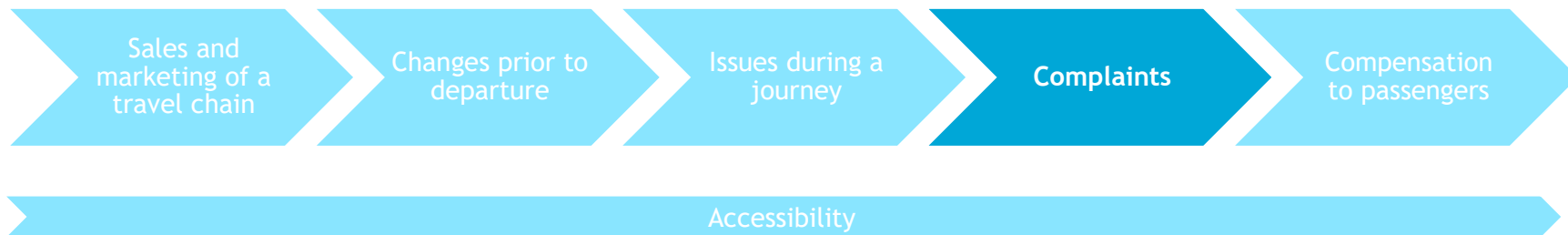
To be considered in contracts between the stakeholders -

Issues during a journey

- With respect to the incidents occurring during the journey, the MaaS operator and the passenger transport service provider may have partly overlapping obligations towards passengers.
- The parties should agree on practices in case of incidents. Attention may be paid to the following:
 - Provision of information (see the section on foreseeable changes)
 - Actions in the event of a failure of a travel identifier
 - Who passengers can contact in the event of a failure
 - How should the partly overlapping re-routing obligations of the MaaS operator and the passenger transport service provider be coordinated / the responsible party determined?
 - Exchange of information on what has been offered to the passenger (for example, whether the ticket price has already been refunded)

CHECKLIST

- ☐ Communication in the event of an incident
- ☐ Practices in the event of a failure of a travel identifier
- ☐ Who the passenger should contact
- ☐ Should the re-routing obligation and the obligation to provide information be centralised to one stakeholder?
- ☐ How can different parties to the travel chain exchange information about their actions towards passengers (re-routing, refund of a ticket price)?



Complaints on travel chain failures -

Correct recipient of a complaint

- In order for passengers to make claims on the basis of a fault in a travel chain or its section, they must lodge a complaint.
- According to general principles, the complaint must be submitted to one's own contracting partner in order to be valid.
- A passenger who is a consumer can almost always submit a complaint to the MaaS operator for it to be valid also in relation to the passenger transport service provider.
 - When an MaaS operator is a comprehensive service provider, it is the direct contracting partner of the passenger and responsible for the performance of the passenger transport service providers it uses as it were for its own.
 - In line with the general principle reflected in chapter 8, section 16 of the Consumer Protection Act, the notice of defect may also be given to the business who has acted as an intermediary in the delivery of a service - but there is no similar principle for business travellers.
- An exception may be a situation for which special regulations on each mode of transport expressly rule that the complaint must be submitted to the passenger transport service provider
 - In this case, it is not clear whether the purpose of identifying the recipient of the complaint in special regulations on each mode of transport is to indicate that a valid complaint cannot be submitted to the intermediary.
 - Rail transport: Passengers may submit a complaint to any railway undertaking involved (Article 27 of the PRR Regulation).
 - Pursuant to Article 27 of the Regulation concerning the rights of passengers in bus and coach transport, if a passenger wants to make a complaint to the carrier, he must submit it within 3 months from the date on which the regular service was performed or when a regular service should have been performed, after which the carrier must inform the passenger of the status of the complaint.
- The rules depend on whether the passenger is a consumer or a business traveller, what the position of the MaaS operator is and which mode of transport is concerned. However, an MaaS operator should be able to inform the passenger of how to make a customer complaint when selling the travel chain - **therefore the parties should agree on how to handle customer complaints.**

Complaints on travel chain failures -

A recommendation requested by FICORA to improve the options of a consumer to make a complaint

- For the complaint options of consumers to be improved, passenger transport service providers and MaaS operators should agree that in addition to accepting complaints about their own operations, [the MaaS operator will forward all complaints about the travel chain to the passenger transport service providers](#) - irrespective of the role of the MaaS operator.
- In this case, the parties could state in their terms and conditions approvable by the passenger that the MaaS operator will receive complaints on behalf of the passenger transport service provider and that complaints submitted to the MaaS operator will be considered to have been made to the passenger transport service provider in question.
- Such an approach would help to clarify the legal situation, which is somewhat ambiguous.
- Because forwarding complaints involves costs, the MaaS operator and the passenger transport service provider should also agree on how to compensate for the forwarding of complaints to the correct responsible party.
- As a result of such an approach, consumers could have a “one-stop shop” for all complaints and not have their rights compromised simply because they selected the wrong one of the travel chain parties to submit a complaint to.



Compensation to passengers -

Contractual liability in the event of a failure according to the general principles

- The purpose of contractual compensation for damages is to bring the breached party to the same financial position as if the contractual obligations would have been duly met - the starting point is full compensation.
- In case of a fault in a service, a consumer passenger always has the right to be compensated for **direct damages** (such as the costs of settling the matter, or arranging an alternative means of transport), but **indirect damages** (such as loss of income) will be compensated for **only if they are caused by lack of due care**.
 - Traditionally, it has been considered that business travellers have the right to be compensated for both direct and indirect damages, unless the contracting partner can demonstrate that it acted with due care.
- Passengers must take reasonable steps to mitigate the damage incurred to them.
 - An example is **finding an alternative means of transport** to avoid the passenger missing all links of the travel chain - otherwise the compensation for damage may be reduced by the amount corresponding to the damage that the passenger could have avoided if he/she had taken steps to mitigate the damage.
- **Only damage that is sufficiently foreseeable may become subject to compensation.**
 - The nature and size of the damage must have been foreseeable at the time of entering the contract.
 - Some of the points to be considered when assessing foreseeability are:
 - Risks generally related to similar contracts
 - The type and financial value of the contract
 - A party's knowledge of the intentions of its contracting partner
- The general principles come into play unless any special legislation (such as special regulations on each mode of transport or the Act on travel service combinations) deviates from these principles.

Compensation to passengers -

Responsibility for travel identifier issues

- Travel identifier issues may give rise to a passenger's right to a remedy if, for example, the passenger was not able to board a means of transport because of travel identifier issues and suffered a damage for this reason.
- As a general rule, the party owning the system that caused the issue is the responsible party.
- An MaaS operator holding the position of an [intermediary](#) is responsible for ensuring that the travel identifier it has submitted will be provided in time and contains all the information required by the travel chain necessary for verifying the right to travel.
 - In the event of a fault, the responsibility is determined on the basis of general contractual liability rules.
 - The MaaS operator is not responsible if the fault in verifying the right to travel is caused by the passenger transport service provider or the passenger:
 - Reading the travel identifier fails because there is a fault in the ticket validating machine of the passenger transport service provider
 - The passenger transport service provider has not provided the identifier to the MaaS operator in due time
- An MaaS operator in the position of a [comprehensive service provider](#) is responsible towards the passenger also when the issue is caused by the passenger transport service provider.

Compensation to passengers -

Responsibility of a [passenger transport service provider](#) in the event of delay

- When a passenger transport service contained in a travel chain is delayed, passengers can claim standard compensation from the provider of the delayed transport service which is possibly determined in the special regulations on each mode of transport.
 - The compensation set out in Article 17 of the PRR Regulation (1371/2007) is between 25 and 50% of the ticket price.
 - In coach and taxi transport, no standard compensation is applied.
- If the delay caused some damage to passengers, they can also claim [compensation for damage](#) from the passenger transport service provider.
 - Pursuant to section 21 of the Rail Transport Act, a rail company must compensate the damage caused by the delay up to EUR 5,000.
 - However, there is no compensation obligation for the delay that a passenger can reasonably be required to be prepared for in the view of the nature of transport, weather conditions, the time required for changing the means of transfer or other conditions related to the transport.
 - In the absence of special regulations, any damage caused by delays will be compensated according to the general contractual principles concerning service faults.
- An obstacle to compensating for the damage caused by the breakdown of the travel chain may be the [requirement for foreseeability](#), because a passenger transport service provider may not be at all aware of the fact that the passenger transport service is a link in a long travel chain.

Compensation to passengers -

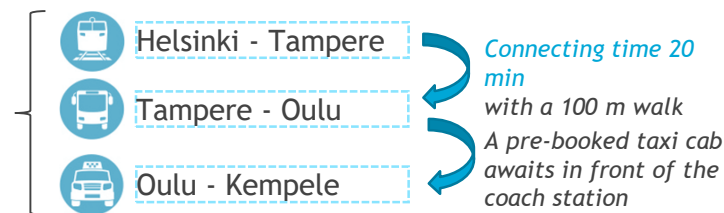
Responsibility of the [MaaS operator](#) in the event of a delay

- An MaaS operator in the position of a [comprehensive service provider](#) may [be liable](#) for damage caused by a delay.
 - The MaaS operator and the passenger have entered into a contract on the completion of the entire travel chain. If the passenger fails to reach the intended destination, the service provided by the MaaS operator fails to meet the contract, and there is a fault in the service.
 - The passenger's right to remedy is determined under general contractual law principles.
- An MaaS operator in the position of an [intermediary](#) [is not liable](#) for damage caused by a delay of a passenger transport service.
 - Exception: if the damage is due to the MaaS operator acting without due care in its intermediary task.
 - Such a situation comes into consideration if the MaaS operator has allowed for such a short connecting time that the travel chain would fail even in the case of a slight delay.

Example 1

A consumer passenger has purchased a travel chain using the application of a MaaS operator.

The train is delayed for 20 min, and the passenger misses slightly the bus connection. A 20-minute connecting time has been calculated by the MaaS operator. Who is responsible for the damage?



An MaaS operator as an intermediary

Liability of the rail company:

- Not obliged to pay the standard compensation, because the delay was less than 60 minutes
- No obligation to compensate for damage, because the loss of a connection due to a delay of a train of a couple of dozens of minutes usually does not require damage to be compensated under the Rail Transport Act

Liability of an MaaS operator:

- No liability for damages, unless
 - deemed to have acted without due care when determining the connecting time.

As the comprehensive service provider

Liability of the rail company:

- Not obliged to pay the standard compensation, because the delay was less than 60 minutes
- No obligation to compensate for damage, because the loss of a connection due to a delay of a train by a couple of dozens of minutes usually does not require damage to be compensated under the Rail Transport Act

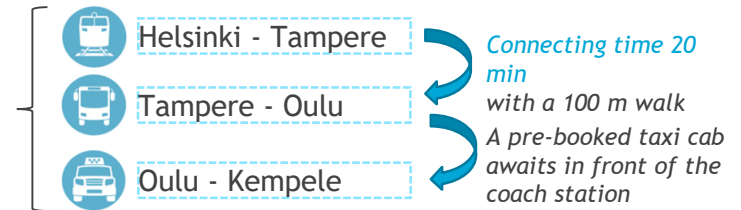
Liability of an MaaS operator:

- If the passenger cannot reach the destination as agreed, there is a fault in the service of the MaaS operator and the passenger may have the right to remedy according to general contractual law principles.

Example 2

A business traveller has purchased a travel chain using an application provided by an MaaS operator.

The train is delayed for 60 min, and the passenger misses the bus connection. Who is responsible for the damage?



An MaaS operator as an intermediary

Liability of the rail company:

- As standard compensation, the passenger can claim 25% of the ticket price for the railway link, if it has not been refunded.
- Pursuant to the Rail Transport Act, a liability for the damage caused up to EUR 5,000.

Liability of an MaaS operator:

- No liability for damages

As the comprehensive service provider

Liability of the rail company:

- As standard compensation, the passenger can claim 25% of the ticket price for the railway link, if it has not been refunded.
- Pursuant to the Rail Transport Act, a liability for the damage caused up to EUR 5,000.

Liability of an MaaS operator:

- If the passenger cannot reach the destination as agreed, there is a fault in the service of the MaaS operator and the passenger has the right to a remedy according to general contractual law principles.

Example 3

A consumer passenger has purchased a travel chain using an application provided by an MaaS operator.

The coach is delayed for 60 min, and the passenger misses the train connection. Who is responsible for the damage?



* Total scheduled distance less than 250 km

An MaaS operator as an intermediary

Liability of the coach company:

- Liability for damages pursuant to general contractual law principles

Liability of an MaaS operator:

- No liability for damages, unless
 - deemed to have acted without due care when determining the connecting time.

As the comprehensive service provider

Liability of the coach company:

- Liability for damages pursuant to general contractual law principles.

Liability of an MaaS operator:

- If the passenger cannot reach the destination as agreed, there is a fault in the service of the MaaS operator and the passenger has the right to a remedy according to general contractual law principles.

Compensation to passengers -

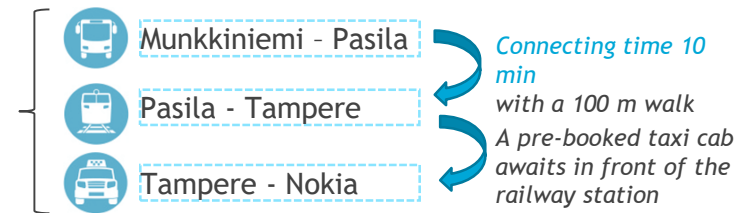
Public transport ticket as part of a travel chain

- **General contractual law principles** mainly come into play with respect to incidents related to public transport travel.
 - If the passenger transport service provider is not a rail company, the provisions of the Rail Transport Act and the PRR Regulation are not applicable. At any rate, the liability provision of the PRR Regulation is not applicable to regional trains in the Helsinki metropolitan area.
 - Similar to the Regulation concerning the rights of passengers in bus and coach transport, incident provisions do not apply to traffic where the scheduled route is less than 250 km
- Unlike in long-haul traffic, a public transport ticket is not necessarily valid for a certain journey from A to B, but provides the right to use various modes of public transport within the validity period of the ticket; in this case, determining the fault in a service is different.
 - On the other hand, if a public transport ticket is included as part of a travel chain in the service provided by an MaaS operator as a comprehensive service provider, there is a fault in the service of the MaaS operator, if the passenger cannot reach the final destination
- According to general principles of contractual and consumer law, **there is a fault in a service if it does not correspond to what was agreed.**
 - In this case, a party has to compensate for the damages suffered by another party, unless it or its assistant (in this case: the carrier) is able to demonstrate that it acted with due care. When determining whether there is a fault in a service, some of the questions to be considered are:
 - What could the passenger reasonably expect (unless agreed upon in more detail)? Passengers must be prepared for weather conditions and similar things to have an effect on scheduled traffic. However, passengers cannot be reasonably expected to be prepared for relatively long daily delays.
 - **Did the passenger have the option to use an alternative mode of transport?**
 - Was the delay communicated correctly and adequately?
 - How much damage did the passenger suffer?

Example

A consumer passenger has purchased a travel chain using the application of a MaaS operator.

Because the bus arrives 5 minutes late at Pasila due to a traffic jam, the passenger misses the train connection. Who is responsible for the damage?



An MaaS operator as an intermediary

Liability of the coach company:

- No obligation to pay the standard compensation, because the total scheduled distance is less than 250 km
- A liability obligation is highly unlikely, because passengers should be prepared for traffic jams caused by a certain time of day or weather conditions

Liability of an MaaS operator:

- No liability for damages, unless
 - the damage is caused by a lack of care on the part of the MaaS operator in calculating the connecting time

As a comprehensive service provider

Liability of the coach company:

- No obligation to pay the standard compensation, because the total scheduled distance is less than 250 km
- A liability obligation is highly unlikely, because passengers should be prepared for traffic jams caused by a certain time of day or weather conditions

Liability of an MaaS operator:

- If the passenger cannot reach the destination as agreed, there is a fault in the service of the MaaS operator and the passenger has the right to a remedy according to general contractual law principles.

To be considered in contracts between the stakeholders -

Compensation to passengers

- The liability of an MaaS operator for a fault in a service is considerably more extensive when it holds the position of a comprehensive service provider.
- It is advisable for an MaaS operator to determine the content of its service as precisely as possible in the service description and make this known to passengers.
- Liability based on general principles may be limited to some extent by contractual terms also in respect to consumer passengers.
 - Contractual terms that significantly deviate from the general principles of consumer law are likely to be deemed unreasonable.
 - Unexpected or strict terms must be notified.
- Compensation obligations based on special regulations regarding each mode of transport, on the other hand, cannot be limited if this compromises the position of a passenger.
 - It is possible for the parties to agree upon their mutual distribution of liability, but if an obligation of a passenger transport service provider is stipulated in special regulations for each mode of transport, it must always be possible for a passenger to seek help from the passenger transport service provider.
 - With respect to road and rail transport, there are provisions on damage compensation only in the Rail Transport Act; in other respects, parties may agree quite freely on their mutual distribution of compensation obligations.

CHECKLIST

- ❑ The service description of an MaaS clearly describes the content of the MaaS: is there a commitment to the delivery of a service by which a passenger can get from A to B?
- ❑ The service description must take into consideration the extent of deviations in the availability of the service and the functioning of the application that constitute a fault in the service.
- ❑ Compensation practices:
 - ❑ Will a specific party centrally handle all compensation cases?
 - ❑ If both the MaaS operator and the passenger transport service provider are liable, which one should passengers primarily turn to?
 - ❑ Exchange of information about what has been compensated or reimbursed to the customer (as well as re-routing, any refund of ticket price, etc.)
- ❑ Limits of liability towards passengers and their reasonableness



Accessibility

- Special regulations on each mode of transport provide for the obligations of passenger transport service providers to assist disabled passengers and passengers with reduced mobility, if they notify their need for assistance prior to the journey.
 - These obligations do not apply to an MaaS operator, whose primary task is to forward such notifications on the need for assistance to others.
 - The extent of the assistance obligation of a passenger transport service provider varies according to the mode of transport.
 - Because the assistance obligations only apply to individual modes of transport, [passengers do not, in principle, have a statutory right to assistance when changing from one mode of transport to another.](#)
- The Non-discrimination Act requires the making of due and appropriate adjustments necessary in each situation to make the service available for persons with disabilities.
 - The nature and scope of activities, costs, financial position of the operator and the support available for such adjustments as well as the needs of persons with disabilities need to be taken into consideration.
 - To be differentiated from general and non-transitory accessibility and availability measures.
 - The service provider has no obligation to change its business concept.
- When the EU Accessibility Directive currently under preparation enters into force, it could also affect the content of the service provided by an MaaS operator.
 - The directive would create obligations for service providers to design and perform their services to make them available for disabled persons.
 - The directive would specify requirements concerning accessibility and disclosure of information.

Assistance obligation for different modes of transport

Notifying the need for assistance



- 48 hours prior to departure*
- Passengers must present themselves at a designated point at the station no earlier than 60 minutes and no later than 30 minutes before the departure time or the passenger check-in.



- 36 hours before the departure time*
- Passengers must present themselves at a designated point at the station no earlier than 60 minutes and no later than 30 minutes before the departure time
- Passengers must inform the relevant parties of their need for a special seat in advance, if the need is known.



- No statutory obligation to inform the passenger transport service provider

Scope of the assistance obligation



- Shared assistance obligation between the rail company and the station managers.
- Access to stations and platforms and the availability of services at stations and on-board trains must be ensured; this includes assistance in boarding the train, during the journey and in leaving the train.
- Assistance and its booking procedure must be **free of charge**.



- The minimum limits concerning the assistance obligation of carriers and terminal managing bodies are included in Annex I of Regulation (EU) No. 181/2001.
- The assistance obligation begins at the point where passengers present themselves and ends with receiving the luggage after exiting a vehicle.
- Assistance and its booking procedure must be **free of charge**; it is offered in designated coach terminals (13 terminals in Finland) and in coaches.



- A general obligation exists to assist passengers in entering and exiting the car safely and to provide them with the help they need.
- Because a taxi cab **is allowed to charge an assistance surcharge from a passenger**, the driver has a more extensive assistance obligation (Government Decree on the maximum prices to be charged from the consumers of taxi transport).

* Even if the need for assistance is not communicated, the passenger transport service provider must take all reasonable measures to enable the passenger to travel. With respect to coaches, this obligation may also apply to the MaaS operator.

To be considered in contracts between the stakeholders -

Accessibility in a travel chain

- The MaaS operator and the passenger transport service provider should agree on practices in order to exchange information about any assistance needs of passengers and how the rights of disabled passengers are taken into consideration in case of travel chain incidents.
 - There are no rules for taxis regarding the notification of a need for assistance.
- Transparent provision of information on whether the accessibility of a route has been verified is important for passengers.
 - Problems can be prevented by careful service design.
 - Pursuant to Part III, chapter 1, section 1 of the Act on Transport Services, an MaaS operator and passenger transport service provider should, in their service descriptions, must inform whether the service is suitable for passengers with disabilities (accessibility of the fleet, assistance services and facilitating equipment).
- An MaaS operator should be prepared for individual requests for reasonable accommodation.
- MaaS operators should follow the preparation of the EU Accessibility Directive, and when designing their services, they should anticipate the changes that may be required by the directive with respect to the accessibility of the service.

CHECKLIST

- ☐ Procedures for exchanging information on a passenger's need for assistance
- ☐ Consideration for the rights of disabled passengers in case of travel chain incidents
- ☐ Notification of any surcharges (applies to taxis)
- ☐ Provision of information of verified accessible routes

Liabilities pursuant to the evolving package travel regulations

- The current Package Travel Act will be replaced by a new Act on travel service combinations, implementing the EU Package Travel Directive.
- The purpose of this section of the analysis is to summarise the position and liability of an MaaS operator to be envisaged in the government proposal for an Act on travel service combinations (105/2017) submitted to Parliament on 19 September 2017.
- As the preparation of the Act is ongoing at the time of the submission of this analysis, the Act may deviate from the one presented here once it enters into force.
- This section of the analysis does not repeat the obligations following from the general principles that have been presented above, but only those arising from the application of package travel rules.
- Currently, the operations of an MaaS operator may fall under the scope of the Package Travel Act (1079/1994), but it has not been deemed relevant to discuss the current state in the context of this analysis.

Key changes

- Key changes in relation to the Package Travel Act (1079/1994) in the government proposal for an Act on travel service combinations (105/2017) submitted to the Parliament on 19 September 2017:
 - **The scope of application of the Act will be expanded.** The new Act will also apply to packages combined by travellers themselves via the website of a trader by entering into separate contracts with different service providers, provided that the traveller selects the travel services before agreeing to pay.
 - **A new concept of a “linked travel arrangement”.** The provisions would also apply to services in which a trader assists passengers in entering into separate agreements with individual service providers or acquiring additional services from another service provider.
 - **A more extensive obligation for organisers to provide information.** The new Act requires the provision of detailed information on the travel services on offer and on the legal rights of a passenger with standardized forms.
 - **More extensive cancellation rights for passengers.** Pursuant to the new Act, a passenger would have the right to cancel a travel package contract at any time before the departure, also for no particular reason.
 - **Improved passenger rights in the event of a fault.** A legal right laid down for passengers to be compensated for the loss of the enjoyment of a holiday in case of a significant fault

Potential roles of an MaaS operator

If a travel chain lasting over 24 hours contains a passenger transport service and a rental car, an MaaS operator may be:

An organiser

An MaaS operator may be an organiser and the travel chain may constitute a **package** if

a) the MaaS operator combines all travel chain services under the same contract; *or*

b) Separate contracts are concluded with service providers for the services of a travel chain, but

- The services are selected in the course of one booking process at one online shop; *or*
- The travel chain is marketed or charged as an aggregate price; *or*
- The services are marketed as a travel chain or under a similar title; *or*
- The services are linked after the MaaS operator has entered into a contract with a traveller by which the traveller may choose his or her preferred services from the offering; *or*
- They are reserved using interlinked online booking procedures.

An MaaS operator uses passenger transport service providers as its assistants and is liable for their performance as it is for its own.

A linked travel arrangement provider

If a travel chain does not constitute a package and the traveller enters into separate contracts with the providers of passenger transport and rental services, but the MaaS operator facilitates:

- a) the separate selection and separate payment of each travel service by travellers on the occasion of a single contact, while the selection and booking processes of different services are clearly separate from each other; *or*
- b) the procurement of at least one additional travel service from another trader in a targeted manner, where a contract with the other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service.

The obligations of the provider of a linked travel arrangement are mainly related to communication, but it may also be held liable for booking errors



An MaaS operator as a tour operator

An organiser's website

- Must display the accessibility conditions of the coach carrier and the terminal management body and ensure that all relevant general information concerning the journey and the conditions of carriage are available in accessible formats, including online booking (Regulation (EU) No. 181/2011, Article 11).

Pre-contractual information to be provided by the organiser

- Must provide the passenger with a form indicating standard information on the rights based on the Act on travel service combinations and clearly, comprehensibly and prominently communicate the following:
 - The organiser and retailer; the principal characteristics of the offered travel services; the total price of a travel package, any surcharges and payment terms; the required minimum number of passengers and the consequences if this is not met; the travel documents; the right of the passenger to cancel the contract before the departure; mandatory or voluntary travel insurance.*
 - A travel package contract must be prepared so that it is clear and comprehensible.*

Other information for which the organiser is responsible

- At the time of entering into the contract, or without undue delay after the contract has been entered into, the passenger must be supplied with a copy of the contract or a contract confirmation, stating the preliminary information referred to in section 7 of the Act on travel service combinations, the approved special requests, other contract terms, obligations and liabilities of the organiser, passenger rights and the necessary guidance and contact information for exercising these rights.*
- Well before the departure, the passenger must receive the necessary tickets, receipts and other documentation as well as other documents and information on the travel connections, including schedules and stops.*
- The obligation to notify the passenger about changes in the travel package (see the Act on travel service combinations, sections 17 to 19).*

**Based on the Act on travel service combinations currently under preparation, expected to enter into force on 1 July 2018. Before this, see the Package Travel Act (1079/1994) for the obligations of a tour operator.*

MaaS operator As the provider of a linked travel arrangement

Website of the provider of a linked travel arrangement

No obligations.

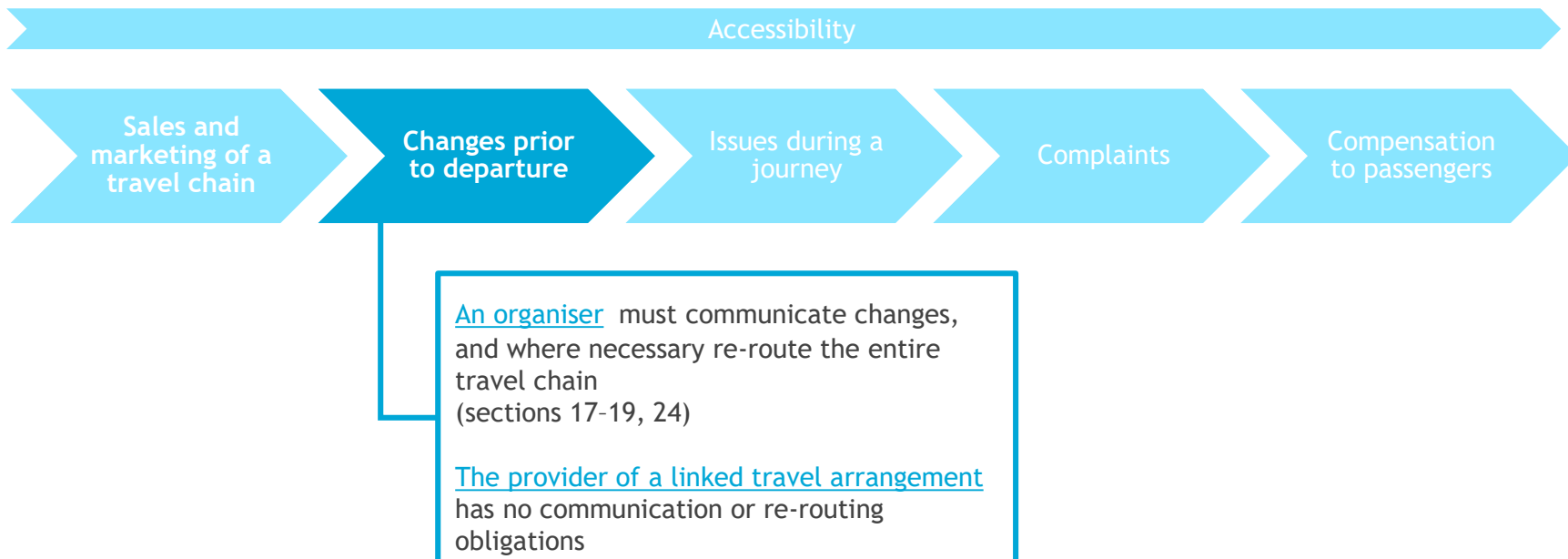
Pre-contractual information to be provided by the provider of a linked travel arrangement

- Before the traveller is bound by a contract leading to a linked travel arrangement, the following information must be communicated clearly, comprehensibly and prominently on a standard form:
 - The traveller cannot exercise the rights related to packages.
 - Each travel service provider is only liable for the performance of its own service.
 - The traveller has insolvency protection applicable to linked travel services* (section 36 of the Act on travel service combinations).

Other information as the responsibility of the provider of a linked travel arrangement

No obligations.

**Based on the Act on travel service combinations, expected to enter into force on 1 July 2018. Before this, see the Package Travel Act (1079/1994) for the obligations of a tour operator.*





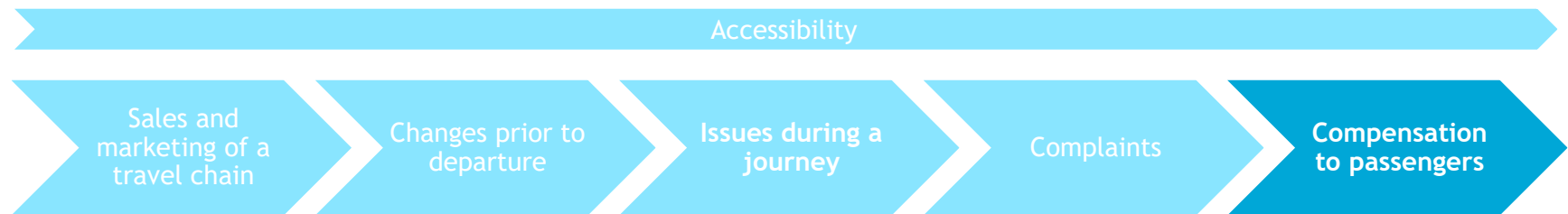
An MaaS operator as an [organiser](#) has the obligation to provide alternative arrangements suitable for the continuation of the journey, without any additional costs incurred (Act on travel service combinations, section 24).

An MaaS operator as a [provider of a linked travel arrangement](#) is not, in principle, responsible for faults occurring in the passenger transport service and does not have a re-routing obligation.



A complaint for a fault in a package must be made to the [organiser](#) (section 23).

With respect to a [linked travel arrangement](#), the claim must be made to the provider of the service concerned.



Issues with travel identifiers

[The organiser](#) or a [provider of a linked travel service](#) is liable for compensation towards the traveller for damages caused by a booking error (section 39).

- A booking error may be caused, for example, by a technical shortcoming of the system or an error made during the booking process.
- The party whose booking system had the error or who was responsible for recording the booking, is to be held responsible.
- Strict liability** - the liability is to be incurred even when due care was followed, and it may be discharged only if the liability is attributable to the traveller or to inevitable and exceptional circumstances.

N.B. The liability of an organiser may be limited by contractual terms to the amount three times the total price of the package (excluding personal injuries).

Travel chain breakdown due to a delay

An MaaS operator as an [organiser](#) may be liable for the breakdown of a travel chain.

- Pursuant to section 20 of the Act on travel service combinations, the organiser is responsible for the performance of a travel package contract also when it uses a passenger transport service provider in performing the contract.
- According to the preparatory material of section 21 of the Act, there is a fault in the performance of the organiser if the transport is delayed; in such a case, a traveller has the right to a remedy under section 29 of the Act, unless the organiser remedies the fault or demonstrates that one of the justifications that discharge the liability exist in this case.
- In calculating the amount of damages, the provisions of chapter 5 of the Tort Liability Act (excluding rail transport) and general principles of damage compensation law are followed.
- Pursuant to the Act on travel service combinations, the traveller also has the right to be compensated for the “loss of enjoyment of a holiday”.

An MaaS operator as a [provider of a linked travel arrangement](#) is not liable for damage caused by a delay of a passenger transport service.

An organiser's right to compensation

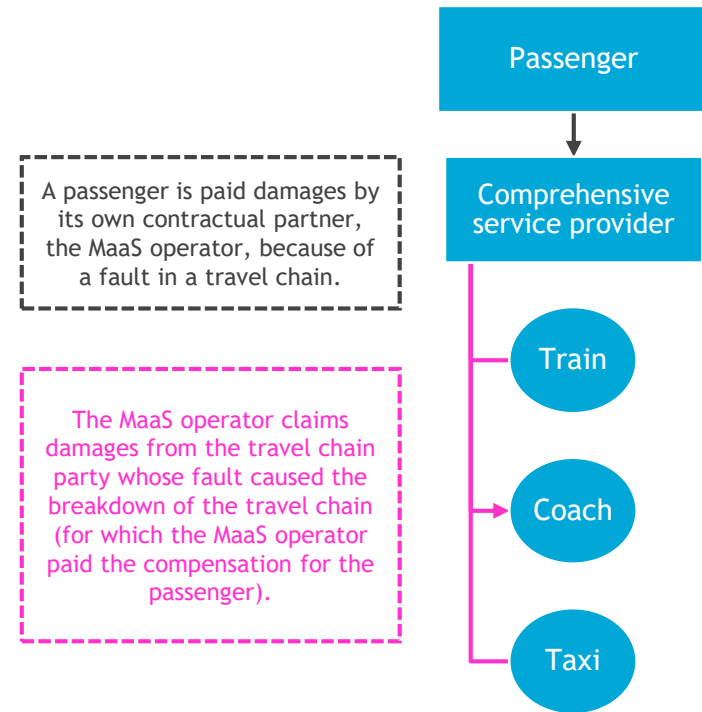
- If an organiser has, according to the Act on travel service combinations, paid damages or granted a reduction of the price or other compensation to the traveller for a fault in a package or a linked travel arrangement, [the organiser has the right to be compensated for the damage it has suffered by the trader whose performance had the fault that gave rise to the traveller's right to the remedy, a reduction of the price or other compensation.](#).. If a matter within the scope of responsibility of more than one trader was the reason for a fault in a package or a linked travel arrangement or the damage thus incurred, the liability of each trader is determined according to what is reasonable in view of the circumstances (Act on travel service combinations, section 40).
 - The Government proposal for the Act on travel service combinations does not specify what is considered reasonable.

4 Liability issues between the stakeholders of a mobility service network (MSN)

Retrospective claims for damages

Overview

- A mutual retrospective liability means, inter alia, that if one of the passenger transport service providers in a travel chain or an MaaS operator has paid damages to a passenger or a third party, whether it is possible for it to request the other parties involved in the performance of the travel chain to reimburse the damages.
- There are no general provisions on rights of recourse.
- The mere involvement in the performance of a travel chain does not, as a rule, mean that passenger transport service providers and the MaaS operator are jointly accountable for the liability of the other parties.



Retrospective claims for damages

Determination of liabilities in the absence of an agreement

- If an MaaS operator compensates a passenger for damage they have suffered, but the damage is ultimately caused by a transport service provider, the basis must be assessed concerning the right of the MaaS operator to be compensated by the passenger transport service provider.
 - A similar situation may come into play if a passenger transport service provider pays compensation to a passenger for damages caused by the lack of due care of the MaaS as an intermediary.
- The right to be compensated by one's own contractual partner is determined [according to general principles of contractual liability](#), unless otherwise agreed or follows from special regulations.
 - Such a claim for compensation to an upstream party of a contract chain is not, legally speaking, an actual claim for recourse; rather, it should be understood to constitute an independent claim for compensation based on a breach of contract that may include other damage items in addition to the compensation paid to the passenger.
 - The PRR regulation contains provisions related to the mutual rights of recourse by rail companies, but it is possible to agree otherwise (see, for example, Article 62) - though this is not applicable to a MaaS operator.
- [The right of an MaaS operator to be retrospectively compensated for damages by the passenger transport service provider is not clear.](#)
 - For example, the Rail Transport Act provides for a liability to compensate a [a passenger](#) for the damage caused by a delayed train service - however, the position of the MaaS operator remains undetermined.
 - The right to compensation depends on the type of contractual relationship between the MaaS operator and the passenger transport service provider
 - With respect to [organisers](#), there are special regulations under preparation that [would confirm the existence of the right of recourse](#) (see previous section).

Retrospective claims for damages

Damages to be compensated

- As stated above, the right of an MaaS operator to retrospective compensation for damage is not clear, and for this reason, it is recommended that the parties agree on this issue in their mutual contracts. In addition to a liability for damage, the parties should also take into consideration the types of damage for which compensation may have to be paid.
- In a situation where an MaaS operator has paid damages to a passenger because a delay of a transport service provider has caused a breakdown of a travel chain, [the liability of the passenger transport service provider is not necessarily as extensive as that of the MaaS operator](#), unless the contracting parties have agreed otherwise.
 - The emergence of a liability is determined by the case-to-case circumstances, and it is not possible to draw upfront conclusions on its emergence that would be applicable to all situations.
- [However, some damages may have to be borne by the MaaS operator alone](#) for one of the following reasons:
 - The damage was foreseeable by the MaaS operator, but [not the passenger transport service provider](#).
 - When assessing foreseeability, the following may be taken into consideration: the extent of the impact of the operations of the MaaS operator on the final service, the distribution of profits or risk of damage between the parties, and how easily the parties could have detected and remedied the fault.
 - A contract between the MaaS operator and the passenger transport service provider [contains terms that limit the extent of liability](#).
 - Designating the compensation paid by the MaaS operator to the passenger as [direct or indirect damages](#) may be a matter of interpretation from the perspective of the contractual relationship between the MaaS operator and the passenger transport service provider.
 - The Sale of Goods act is not applicable to the relationship between an MaaS operator and a passenger transport service provider.
 - On the other hand, agreements should take into account that the CPA has a classification for the compensability of damage items - it should be ensured that this is provided for in agreements.
 - The principles of the Sale of Goods act on direct and indirect damages are often analogically applicable to commercial business agreements that apply to services.

To be considered in contracts between the stakeholders -

Retrospective claims for damages

- It is recommended that the parties agree on the presentation of retrospective claims for damage.
- Agreements between the parties should take into consideration **the distribution of risks and liabilities**.
 - In principle, the liability should lie with the party which is in the best position to avoid the damage.
 - Force majeure terms for unforeseeable damage
 - Consideration for insurance, if there is any
- Contractual practices should not lead to unreasonable results.
 - The distribution of liabilities should allow small operators to maintain their ability to bear risks.
- Compensation of direct and indirect damages
 - Agreement on limits of liability.
 - It should be taken into account that the same damage may be direct one for one party and indirect for another.
- An agreement between an MaaS operator and a passenger transport service provider **must not compromise the position of a consumer**.

CHECKLIST

- ☐ Do the parties have the right to claim retrospective compensation for the damages paid to passengers?
- ☐ What kinds of damages may be considered for compensation?
- ☐ Limitations of liability

5 Protection of personal data in an MSN

1. Regulations on the protection of personal data
2. The concept of personal data
3. Principles of processing personal data and the purpose of use of personal data
4. Data controller and processor
5. Rights of data subjects

Regulations on the protection of personal data

- The processing of personal data is mainly regulated by the Personal Data Act and the General Data Protection Regulation of the European Union (“GDPR”), applicable from 25 May 2018.
- Special regulations stipulate further provisions on the processing of personal data.
- The Act on Transport Services does not provide for the processing of personal data with the exception of Part III, chapter 2, section 4, according to which “Service providers obliged to open interfaces ... shall ensure that the interface can be opened without compromising the service's information security or privacy.”
- In most cases, the provision of travel chains requires processing personal data to enable, for example, the purchasing of a travel chain and the verification of a passenger's right to travel → in such cases, data protection legislation is applicable to the operations of a MSN

Personal data in travel chains

- The concept of personal data is extensive.
- As a rule, a large part of the data related to travel chains is personal data.
 - Examples include: contact details, location data and travel identifiers of a passenger.
 - Personal data is also created in the context of video surveillance.
- Even pseudonymised information is still considered to be personal data.
 - The regulations are applicable even though one of the travel chain parties may not be able to identify individual passengers. It is sufficient if one party can identify the person
- Some of the information possibly processed in a travel chain is considered to belong to specific groups of personal data.
 - Information concerning accessibility may be considered as health data.

Personal data means:

*“any **information relating** to an **identified or identifiable natural person** (data subject); an identifiable **natural person is one who can be identified, directly or indirectly**, in particular by reference to an identifier, such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”*
(Article 4(1) of GDPR)

Principles of processing personal data

- According to Article 6 of the GDPR, personal data can be processed only:
 - with the consent of the data subject;
 - if it is necessary for the performance of a contract between the data subject and controller;
 - for compliance with a legal obligation to which the controller is subject;
 - to protect the vital interests of the data subject or another natural person;
 - for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; or
 - for the purposes of the legitimate interests pursued by the controller or by a third party.
- In a mobility service network, the justification for the processing of personal data is, in principle, [the performance of a contract and/or a legitimate interest](#).
 - A controller may also have parallel justifications for processing data.
 - Our view is that a public body participating in the performance of a travel chain, which is comparable to a public authority, may justify its processing of personal data through legitimate interests.
- If a party wishes to collect other information than that directly related to the provision of the service, the [consent](#) of the person is usually required
 - The [collection of location data](#) and [direct electronic marketing](#) are examples of cases that may require explicit consent.

Purposes for personal data use

- The selection and determination of a justification for processing personal data depend on the purpose.
 - Purposes for using personal data must be planned and defined before any data is collected.
 - In a mobility service network, data is mainly collected for providing services and managing customer accounts.
 - The data subjects must be informed of the purposes prior to processing.
 - Essentially, data can only be used for predefined purposes.

Data controller and processor

“Controller”: A controller is a party who, alone or jointly with others, determines the purposes and means of the processing personal data.

- Determines the purposes of processing independently.
- Uses the data for their own purposes according to their own data processing practices.
- Parallel controllers may exist.

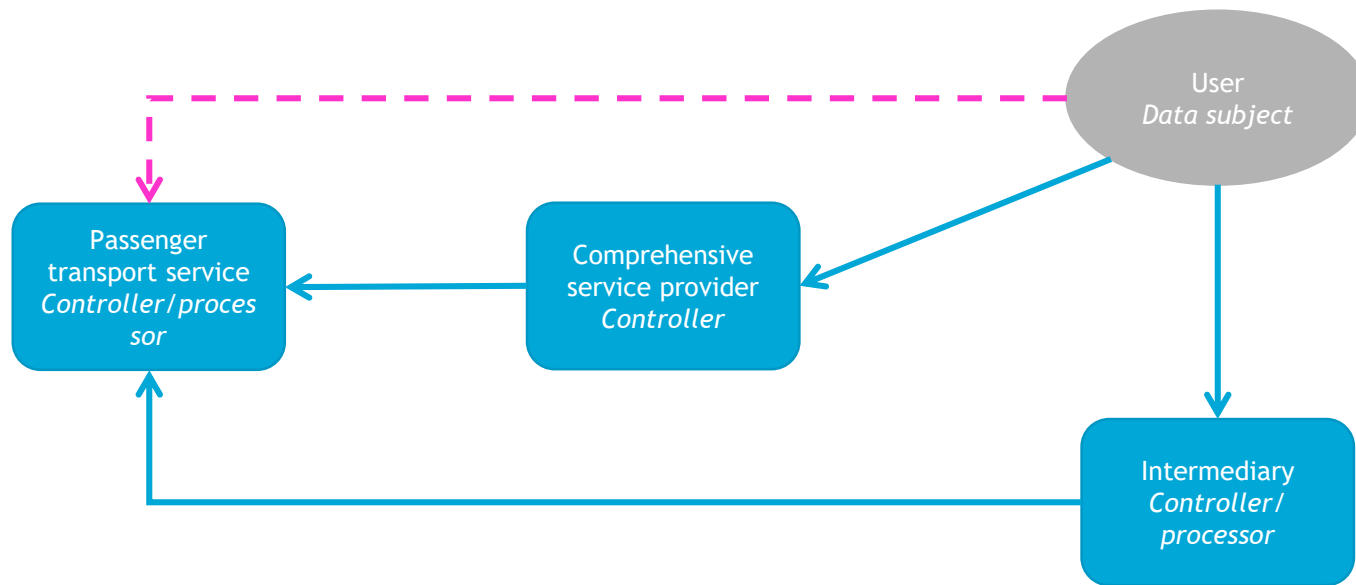
“Processor”: A body which processes personal data on behalf of the controller. Processing is often commissioned or subject to subcontracting or a partnership.

- Does not process the data for their own purposes, but processes the data according to the instructions of another body and solely on behalf of that body
- Does not have any independent right to use the data.

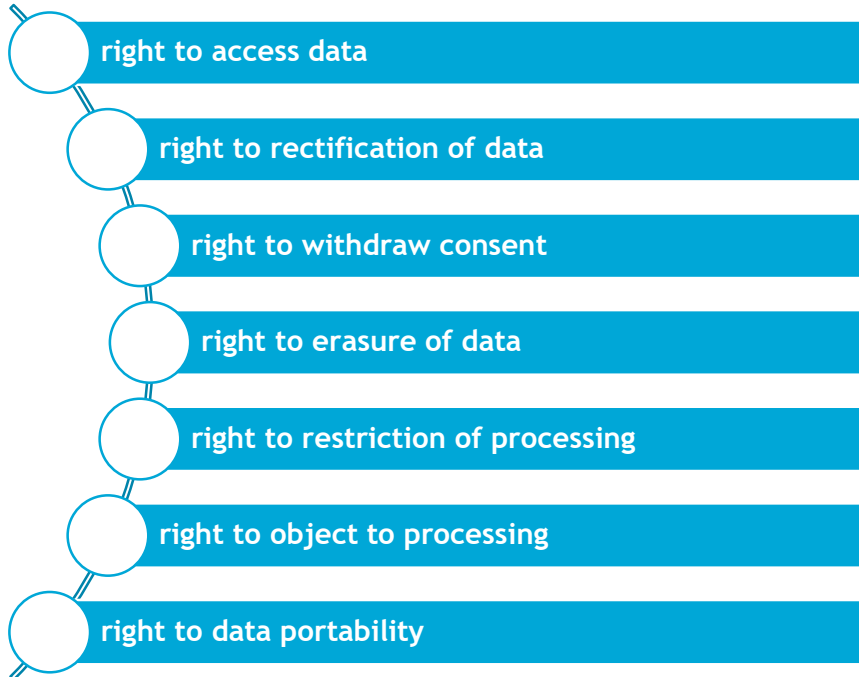
Data controller and processor

- As a comprehensive service provider, an MaaS operator is, in principle, a data controller in a MSN.
- An MaaS operator as an intermediary, and passenger transport service providers, are data controllers or processors depending on whether they process data for the benefit of their own business operations or according to the instructions of their contracting party on behalf of that party.
- In a MSN, there are disclosures of data between the data controllers.
 - The disclosing party is responsible for the legality of the disclosure.
- Each data controller is independently responsible for matters such as the provision of information to data subjects.
 - Data controllers may, through contracts, appoint one of the controllers to be responsible for the provision of information.
- Article 28 of the General Data Protection Regulation provides for certain requirements to be included in a contract between a data controller and a processor.

Data controller and processor



Rights of data subjects



- A data controller must, besides informing the data subject of such rights, enable the exercise of these rights.
- Processing of personal data must be organised to enable an efficient response to the requests by data subjects to exercise their rights
- It is advisable to also take the rights of data subjects into consideration in the technical design of personal data files and processing systems.
- The right to data portability only applies to data collected on the basis of consent or the performance of a contract.