

Single European railway area. Recast

2010/0253(COD) - 07/06/2012 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Transport and Tourism adopted the recommendation for second reading contained in the report by Debora SERRACCHIANI (S&D, IT) on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council establishing a single European railway area (recast).

The committee recommends that Parliament's position in second reading following the ordinary legislative procedure should amend the Council position as follows:

Exclusions from the scope: the committee reinstated an amendment from first reading whereby Member States may exclude railway undertakings which only operate rail-freight services on railway infrastructure managed by these undertakings before this Directive enters into force, and which has a gauge different from the dominant network within the Member State, and is connected to a railway infrastructure on the territory of a non-EU State - as long as the managed infrastructure is not identified in Decision No 661 /2010/EU on Union guidelines for the development of the trans-European transport network.

Infrastructure manager: Members clarified again the essential functions of the infrastructure manager, these are: the decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths and the decision making on infrastructure charging, including determination and collection of the charges, and investments in infrastructure.

Independence of the manager: the infrastructure manager shall manage its own IT services, to ensure that commercially sensitive information is adequately protected. Both railway undertakings and infrastructure managers that are not completely independent of one another must be responsible for their own staff policies.

Management of railway undertakings in accordance with commercial standards: Members state that shareholders of publicly owned or controlled railway undertakings shall be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies under the rules of the company law of Member States can. These shall be without prejudice to the powers of supervisory bodies under this company law relating to the appointment of board members.

Transparent serration of accounts: in order to ensure the development of competition, continued investment and the cost-effectiveness of service provision of the railway sector the separation of accounts should require the organisation of distinct divisions within a single undertaking or the management of infrastructure and transport services by separate entities. The accounts for the different areas of activity shall be kept in a way that allows monitoring of the prohibition on transferring public funds paid to one area of activity to another and the monitoring of the use of income from infrastructure charges and surpluses from other commercial activities.

Sound financing of the infrastructure manager: an indicative rail infrastructure development strategy with a view to meeting future mobility needs in terms of maintenance, renewal and development of the infrastructure based on sustainable financing of the railway system shall publish at the latest two years after the entry into force of the Directive, after consultation with interested parties.

Whenever revenues are not sufficient to cover the financing needs of the infrastructure manager, without prejudice to the charging framework in the Directive, Member States shall also provide the infrastructure manager with **financing consistent with its tasks**.

Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed five years, the profit and loss account of an infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities, non refundable incomes from private sources and State funding on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, on the other hand.

Limitations on the right of access: the amended text states that the regulatory body shall consider the information provided by the relevant parties, and, as appropriate shall ask for any relevant additional information and initiate consultation with all relevant parties within one month from the receipt of the request. The regulatory body shall consult all the relevant parties, as appropriate, and shall inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within ten weeks of receipt of the request.

The Commission shall, within 18 months after the deadline for transposition), adopt measures setting out the details of the procedure and criteria to be followed for the application of these provisions.

Levy on railway undertakings providing passenger services: based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **network** (and not the working group), the Commission shall adopt measures setting out the details of the procedure and criteria to be followed for the application of these provisions.

Conditions of access to services: operators of service facilities shall supply to all railway undertakings access, including track access, to the facilities referred to in Annex III, point 2, and to the services supplied in these facilities in a non-discriminatory manner.

Requests by railway undertakings for access to, and supply of services in the service facility shall be answered **within a reasonable time limit** set by the regulatory body. Such requests may **only be rejected if there are viable alternatives** allowing them to operate the freight or passenger service concerned on the same routes under economically acceptable conditions.

The operator of the service facility shall in written form justify any negative decision and indicate viable alternatives in other facilities.

Where a service facility **has not been in use for at least two consecutive years** and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

Scope of market monitoring: in this context, the Commission shall closely involve representatives of the Member States, including representatives of the regulatory bodies, and of the sectors concerned in its work, including, where appropriate, **the railways sector's social partners, users and local and regional authority representatives**. Where appropriate, the Commission shall also involve the European Railway Agency.

The Commission shall monitor the use of the networks and the evolution of framework conditions in the rail sector, in particular infrastructure charging, capacity allocation, investments made in railway infrastructure, the degree of market opening and harmonisation between Member States and the development of employment and the related-social conditions in the rail sector (as required by Parliament.) These monitoring activities are without prejudice to similar activities existing in Member States and to the role of social partners.

General requirements for obtaining a licence: Members introduced an amendment stating that **in the Member States which border third countries**, with the network whose track gauge is different from the main rail network within the Union and whose rail freight markets are dominated by the rail freight carriages to and from third countries, the licensing authorities when making decisions on the issue of licences to railway undertakings which are directly or indirectly effectively controlled through the ownership shares of third countries or nationals of third countries, may take into account the existence or non-existence of reciprocal access for Union rail undertakings to the rail freight market of the respective third country.

The Commission shall adopt measures setting out the details for the use of a common template for the licence.

Requirements relating to civil liability: notwithstanding the obligation on adequate cover, the specificities and the risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes, may be taken into account.

Infrastructure cost and accounts: Member States shall ensure that a contractual agreement, fulfilling the basic principles and parameters set out in Annex V, is concluded between the competent authority and the infrastructure manager covering a period of not less than five years (rather than 3 years.) Members consider that a **minimum duration of five years** is acceptable as it gives the necessary stability for the railway sector as regards the development of rail infrastructure.

Principles of charging: the Commission shall adopt measures setting out the modalities to be followed for the application of the charging for the cost of **noise effects**. Those implementing measures shall not result in undue distortion of competition between railway undertakings and shall not affect the overall competitiveness of the rail sector.

Furthermore, any such modification of infrastructure charges to take account of the cost of noise effects shall support the **retrofitting of wagons** with the most economically viable low-noise braking technology available.

Members ask that before the deadline for transposition, the Commission shall adopt implementing measures setting out the modalities to be followed in the application of the differentiation of the infrastructure charge to ensure that it does not result in a loss of revenue for infrastructure managers. Those implementing measures shall not result in undue distortion of competition between railway undertakings and shall not affect the overall competitiveness of the rail sector.

Capacity rights: infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. This non-usage charge shall provide **incentives for efficient use of capacity**. The levy of such a charge on applicants that were allocated a train path shall be mandatory in the event of their regular failure to use allocated paths or part of them. For the imposition of this charge, the infrastructure managers shall publish in their network statement the criteria to determine such failure to use.

Regulatory body: the amended text provides that the **president and governing board** of the regulatory body for the railway sector shall be appointed by the national or other competent parliament for a fixed and renewable term under clear rules which guarantee independence.

The regulatory body shall also cooperate closely with the national safety authority within the meaning of Directive 2008/57/EC, and the licensing authority within the meaning of this Directive.

Member States shall ensure that these authorities jointly develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the railway market. This

framework shall include a mechanism for the regulatory body to provide the national safety and licensing authorities with non-binding recommendations on issues that may affect competition in the railway market and for the national safety authority to provide the regulatory body and licensing authority with non-binding recommendations on issues that may affect safety.

The regulatory body shall regularly, and in any case at least every two years, **consult representatives of users of the rail freight and passenger transport services**, to take into account their views on the rail market.

The regulatory body **shall consider any complaints** and, as appropriate, ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint.

European Regulatory Body: in light of the experience acquired through the network of regulatory bodies, the Commission shall no later than two years after the publication of this Directive, submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions a report on the cooperation between regulatory bodies. The Commission shall, if appropriate, propose complementary measures to ensure a more integrated regulatory oversight of the European rail market, especially for supervisory and arbitration functions in particular for international services. To that aim, legislative measures shall also be considered, if appropriate.