

Single European railway area. Recast

2010/0253(COD) - 03/07/2012 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution 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).

Parliament reached its position in second reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated with the Council. They amend the Council's position as follows:

Exclusions from the scope: the amended text stipulates that Member States may decide time periods and deadlines for the schedule for capacity allocation different from those referred to in the Directive if the establishment of international train paths in cooperation with infrastructure managers of third countries on a network whose track gauge is different from the main rail network within the Union has a significant impact on the schedule for capacity allocation in general.

In addition, Member States may exclude from the application of Article 32(4) (Exceptions to charging principles) trains not equipped with the ETCS and used for regional passenger services which have been placed into service for the first time before 1985.

Management of the railway undertakings according to commercial principles: as requested by Parliament, the 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. The provisions in this regard shall be without prejudice to the powers of supervisory bodies under this company law relating to the appointment of board members.

Separation of accounts: the accounts for the different areas of activity shall be kept in a way that allows for 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.

Financing of the infrastructure manager: the text provides that after consultation with the interested parties, 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 be published two years within the entry into force of the Directive.

Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed a period of five years, the profit and loss accounts 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.

Conditions of access to railway infrastructure: the new Directive stipulates that, following the request from the relevant competent authorities or interested railway undertakings, the relevant regulatory body or bodies shall determine whether the principal purpose of the service is to carry passengers between stations located in different Member States. Based on the experience of regulatory bodies, competent authorities

and railway undertakings and based on the activities of the network referred to in the Directive, the Commission shall adopt within 18 months after the deadline for transposition measures setting out the details of the procedure and criteria to be followed for the application of this provision.

Limitation of the right of access and of the right to pick up and set down passengers: the amended text stipulates that the regulatory body shall consider the information provided by these parties, and, as appropriate, shall ask for relevant 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 six weeks of receipt of all relevant information.

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

Conditions of access to services: infrastructure managers shall supply to all railway undertakings, in a non-discriminatory manner, the minimum access package laid down in point 1 of Annex II.

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 refused if there are viable alternatives** allowing them to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions.

Where requests by railway undertakings concern access to, and supply of services in a service facility managed by an operator of the service facility, the operator of the service facility shall justify in written form any decision of refusal 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 authorities 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 investments made in railway infrastructure, the degree of market opening and harmonisation between Member States, as well as the **development of employment and the related social conditions** in the rail sector. These monitoring activities are without prejudice to similar activities existing in Member States and to the role of social partners.

General conditions for obtaining a licence: the Commission shall adopt measures setting out the details for the use of a common template for the licence and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of the provisions in this regard.

Requirements relating to cover for civil liability: notwithstanding the obligation to provide adequate guarantees, 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: as requested by Parliament, 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**.

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

Exceptions to charging principles: in order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market can bear this, levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness of rail market segments.

An amendment stipulates that the infrastructure charges for the use of railway corridors which are specified in Commission Decision 2009/561/EC amending Decision 2006/679/EC as regards technical specifications for interoperability relating to subsystems of the trans-European conventional and high-speed rail systems shall be differentiated to give incentives to equip trains with the ETCS. Such differentiation shall not result in any overall change in revenue for the infrastructure manager.

Reservation charges: charges levied for capacity that is allocated but not used 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 case 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 Directive provides that Member States shall ensure that the persons in charge of decisions to be taken by the regulatory body are appointed under **clear and transparent rules which guarantee their independence** by the national cabinet or council of ministers or by any other public authority which does not directly exert ownership rights over regulated undertakings. These persons should:

- make an **annual declaration of commitment and declaration of interests** indicating any direct or indirect interests that may be considered prejudicial to their independence and influence the performance of a function;
- withdraw from decision-making in cases which concern an undertaking with which they had a direct or indirect relation during the year before the launch of a procedure;
- after their term in the regulatory body, have no professional position or responsibility with any of the regulated undertakings or entities for a period of not less than one year;
- not have any interest or business relationship with any of the regulated undertakings or entities, and do not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body.

Functions of the regulatory body: the regulatory body shall **cooperate** closely with the national safety authority within the meaning of Directive 2008/57/EC on the interoperability of the rail system within the Community, and the licensing authority within the meaning of the 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 **recommendations** on issues that may affect competition in the railway market.

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, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint.

Cooperation between regulatory bodies: the regulatory bodies shall exchange information about their work and decision-making principles and practice and in particular exchange information on the main issues of their procedures and problems of interpretation of transposed EU railway law.

They shall cooperate for the purpose of coordinating their decision-making across the Union. The Commission shall be a member, coordinate and support the work of the network and make recommendations to the network, as appropriate.

Reports: the Commission shall, if appropriate, propose **legislative measures in relation to the opening of the domestic rail passenger market and to develop appropriate conditions to ensure non-discriminatory access to the infrastructure**, building on the existing separation requirements between infrastructure management and transport operations, and shall assess the impact of any such measures.

In light of the experience acquired through the network of regulatory bodies, the Commission shall no later than two years after the entry into force of the Directive, submit a report on the cooperation between regulatory bodies. It shall, if appropriate, propose complementary measures to ensure a more integrated regulatory oversight of the European rail market, in particular for international services. To that aim, legislative measures shall also be considered, if appropriate.