

Single European railway area. Recast

2010/0253(COD) - 21/11/2012 - Final act

PURPOSE: to simplify, clarify and modernise the regulatory framework for Europe's railway sector so as to increase competition, strengthen market supervision and improve conditions for investment in the sector.

LEGISLATIVE ACT: Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area.

CONTENT: the Council adopted a Directive establishing a **single European railway area**, following the approval by the European Parliament of the compromise reached in the negotiations between the two institutions.

The Directive is a **recast of the three directives of the 2001 "first railway package"** (Directive 2001/12/EC, Directive 2001/12/EC and Directive 2001/13/EC) which launched a gradual opening-up of the railway sector to competition at European level.

The new Directive aims to: (i) foster the development of the Union railways; (ii) set out broad principles for granting licences to railway undertakings and (iii) coordinate arrangements in the Member States governing the allocation of railway infrastructure capacity and the charges made for the use thereof.

The main elements of the Directive are as follows:

Management independence: in order to render railway transport efficient and competitive with other modes of transport, Member States shall ensure that, as regards management, administration and internal control over administrative, economic and accounting matters, railway undertakings directly or indirectly owned or controlled by Member States have **independent status** in accordance with which they will hold, in particular, assets, budgets and accounts which are separate from those of the State.

Separation of accounts: in order to ensure the future development and efficient operation of the railway system, **a distinction should be made between the provision of transport services and the operation of infrastructure**. It is necessary for these two activities to be managed separately and to have separate accounts.

Member States shall ensure that the **essential functions** determining equitable and non-discriminatory access to infrastructure are entrusted to bodies or firms that do not themselves provide any rail transport services.

Financing of the infrastructure manager: financing of rail infrastructure will be improved by **longer-term planning**, offering more certainty to investors. Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union, including the need to cooperate with neighbouring third countries. For that purpose, they shall publish, by 16 December 2014, 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. That strategy shall cover a period of at least five years and be renewable. Member States should ensure that infrastructure managers and existing publicly owned or controlled railway transport undertakings are given a **sound financial structure**, having due regard to Union rules on State aid.

Conditions of access to railway infrastructure: competition between railway undertakings will be enhanced by making rail market access conditions **more transparent** and **improving access for operators to rail-related services** such as railway stations, freight terminals and maintenance facilities.

The Directive provides that railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure in all Member States for the purpose of operating **all types of rail freight services**. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities, and to infrastructure serving or potentially serving more than one final customer as well as to railway infrastructure in all Member States for the purpose of operating an **international passenger service**. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located along the international route and set them down at another, including stations located in the same Member State.

Member States should have the option of **limiting the right of access to the market** where that right would compromise the economic equilibrium of those public service contracts and where approval is given by the relevant regulatory body on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract.

In order to contribute to the operation of passenger services on lines fulfilling a public service obligation, Member States should be able to authorise the authorities responsible for those services to **impose a levy on passenger services which fall within the jurisdiction of those authorities**. That levy should contribute to the financing of public service obligations laid down in public service contracts.

To ensure transparency and non-discriminatory access to rail infrastructure, and to services in service facilities, for all railway undertakings, all the information required to use access rights should be published in a **network statement**.

Market monitoring: 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, developments as regards prices and the quality of rail transport services, rail transport services covered by public service contracts, licensing and the degree of market opening and harmonisation between Member States, **development of employment and the related social conditions** in the rail sector. These monitoring activities are without prejudice to similar activities in Member States and to the role of social partners.

Granting licences: the procedures for granting, maintaining and amending licences for railway undertakings should be transparent and in accordance with the principle of non-discrimination. In order to ensure dependable and adequate services, it is necessary to ensure that, at all times, railway undertakings meet certain requirements in relation to **good repute, financial fitness and professional competence**.

Charges and costs: the new Directive adapts the charging rules to encourage the **modernisation of the infrastructure, including noise reduction**.

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**. 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.

Charges for the use of railway corridors shall, in principle, be **differentiated** in order to encourage the introduction of the European Train Control System (ETCS).

Railway undertakings and the infrastructure manager shall be provided with incentives to **minimise disruption** and improve performance of the network.

Regulatory body: each Member State shall establish a single national regulatory body for the railway sector. This body shall be a **stand-alone authority** which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity. It shall also be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. It shall furthermore be functionally independent from any competent authority involved in the award of a public service contract.

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 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 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, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall have the power to carry out **audits** or initiate external audits to verify compliance with accounting separation provisions.

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 on the problems of interpreting transposed Union railway law. They shall otherwise cooperate for the purpose of coordinating their decision-making across the Union. For this purpose, they shall participate and work together in a **network** that convenes at regular intervals.

Report: by 31 December 2012 at the latest, the Commission shall submit a report on the implementation of measures relating to the development of the Union railways.

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.

ENTRY INTO FORCE: 15/12/2012.

TRANSPOSITION: 16/06/2015. The obligations for transposition and implementation of Chapters II and IV of this Directive shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.

DELEGATED ACTS: the Commission may adopt delegated acts in respect of the technical amendments to the information to be provided by the undertaking applying for a licence, to the list of classes of delay, to the schedule for the allocation process, and to the accounting information to be supplied to the regulatory bodies. The power to adopt delegated acts shall be conferred on the Commission for a **period**

of five years from 15 December 2012. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification (this period may be extended by two months). If the European Parliament or the Council objects, the delegated act shall not enter into force.