

Single European railway area. Recast

2010/0253(COD) - 27/03/2017 - Follow-up document

The Commission presents a report on delegated acts under Article 60(2) of Directive 2012/34/EU establishing a single European railway area (recast).

The power to adopt delegated acts is conferred on the Commission for a period of 5 years from 15 December 2012 (this may be tacitly extended for an identical period).

This report complies with the Commission's obligation to produce a report regarding the exercise of the delegation within nine months of the end of the five-year period.

Exercise of the delegation: the Directive empowers the Commission to adopt delegated acts, with certain conditions, in the application of certain other articles of the Directive, these being:

1) Article 20(5) (requirements to be met by undertakings applying for a licence): each undertaking applying for a licence must provide at least the information listed in Annex III to the Directive. This includes information on available funds, working capital, relevant costs, taxes and social security contributions.

A provision empowers the Commission to adopt delegated acts amending Annex III on the basis of the experience gained by licensing authorities or the evolution of the rail transport market. The Commission is closely monitoring developments in the rail transport market; however, to date it has found no urgent need to revise the information requirements set out in Annex III. **Therefore, no delegated act in this field has yet been adopted.**

The Commission feels that **the empowerment should remain in place**, since there are several areas that might require revision of Annex III in future. Depending on the experience of licensing authorities and the behaviour of foreign investors, it might be necessary to require information regarding whether the funds, capital and assets are located inside or outside the EU.

2) Article 35(3) (framework for setting up performance schemes: classes of delays): infrastructure charging schemes must encourage railway undertakings and infrastructure managers to minimise disruption and improve the performance of the railway network through a performance scheme.

The basic principles of the performance scheme as set out in point 2 of Annex VI to the Directive apply throughout the network (e.g. the list of classes of delays, the basic procedural rules for calculating the payments due, and the obligation to provide a dispute resolution system).

Point 2(c) of Annex VI lists the classes and sub-classes to which all delays must be assigned. The list may be amended in the light of the evolution of the rail market and experience gained by regulatory bodies, infrastructure managers and railway undertakings.

The Directive had to be transposed by June 2015, but given the delays in transposition, **current experience does not justify revising Annex VI**. Therefore no delegated act in this field has been adopted so far.

In this context, it should be noted that the delay classes of Annex VI are based on a document of the International Union of Railways (UIC) that reflects international best practice in the sector. The document was adopted for the first time in 1990 and has been amended four times since, which suggests that the

approach of the sector is evolving in this area and as a result the relevant legislation should be revised, if appropriate. Hence, **the Commission may need to use this delegated power** in the coming years.

3) Article 43(2) (capacity allocation process): the Directive requires infrastructure managers to adhere to the schedule for capacity allocation set out in Annex VII to the Directive. After consulting all infrastructure managers, the Commission may amend Annex VII to take into account operational considerations in the allocation process.

From discussions with stakeholders, it appeared that the capacity allocation **provisions of Annex VII might need to be supplemented** to take into account some railway undertakings' needs to reserve capacity more often than by one annual deadline and to provide for more timely information, consultation and coordination on temporary capacity restrictions.

A draft delegated act based on input from previous exchanges with stakeholders was presented to the GERM plenary meeting in December 2016. **The delegated act is expected to be adopted by mid-2017.**

4) Article 56(13) (accounting information to be provided to the regulatory body): Annex VIII details accounting information to be supplied to the regulatory body upon request, covering especially the issues of account separation, monitoring of track access charges and financial performance. The Commission may adopt delegated acts amending Annex VIII, to adapt it to changes in accounting and control practices. As certain Member States were late in transposing the Directive and some regulatory bodies have only recently been given explicit powers to check compliance with accounting separation requirements, the experience gained to date does not justify revising Annex VIII. However, the practice of regulatory bodies in applying Annex VIII will show whether the level of detail required can be reduced or whether the Annex needs to be made more precise by way of a delegated act.

Conclusion: discussions on the draft delegated act on capacity allocation are at an advanced stage. Once Directive 2012/34/EU has been completely transposed, the experience gained by stakeholders may require the Commission to envisage amendments to the other Annexes to the Directive in the years to come.