

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2010/0253(COD) Procedure completed
Single European railway area. Recast	
Repealing Directive 95/18/EC <a href="#">1993/0488(SYN)</a>	
Repealing Directive 2001/12/EC <a href="#">1998/0265(COD)</a>	
Repealing Directive 2001/13/EC <a href="#">1998/0266(COD)</a>	
Repealing Directive 2001/14/EC <a href="#">1998/0267(COD)</a>	
Repealing Directive 2001/14/EC <a href="#">1998/0267(COD)</a>	
Repealing Directive 2004/51/EC <a href="#">2002/0025(COD)</a>	
Amended by <a href="#">2013/0029(COD)</a>	
Subject	
3.20.02 Rail transport: passengers and freight	
3.20.11 Trans-European transport networks	

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	<b>TRAN</b> Transport and Tourism		27/09/2010	
		S&D <a href="#">SERRACCHIANI Debora</a>		
		Shadow rapporteur		
		PPE <a href="#">KUHN Werner</a>		
		ALDE <a href="#">TREMOSA I BALCELLS Ramon</a>		
		Verts/ALE <a href="#">CRAMER Michael</a>		
		ECR <a href="#">ZILE Roberts</a>		
	Former committee responsible			
	<b>TRAN</b> Transport and Tourism		27/09/2010	
		S&D <a href="#">SERRACCHIANI Debora</a>		
	Former committee for opinion			
	<b>JURI</b> Legal Affairs		01/12/2010	
		ECR <a href="#">KARIM Sajjad</a>		
Council of the European Union	Council configuration	Meeting	Date	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3196</a>	29/10/2012	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3151</a>	08/03/2012	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3134</a>	12/12/2011	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3098</a>	16/06/2011	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3052</a>	02/12/2010	
European Commission	Commission DG	Commissioner		
	<a href="#">Mobility and Transport</a>	KALLAS Siim		

Key events			
17/09/2010	Legislative proposal published	<a href="#">COM(2010)0475</a>	Summary

23/09/2010	Committee referral announced in Parliament, 1st reading		
02/12/2010	Debate in Council	<a href="#">3052</a>	Summary
16/06/2011	Debate in Council	<a href="#">3098</a>	Summary
11/10/2011	Vote in committee, 1st reading		Summary
19/10/2011	Committee report tabled for plenary, 1st reading	<a href="#">A7-0367/2011</a>	
14/11/2011	Debate in Parliament		
16/11/2011	Results of vote in Parliament		
16/11/2011	Decision by Parliament, 1st reading	<a href="#">T7-0503/2011</a>	Summary
09/03/2012	Council position published	<a href="#">18581/2/2011</a>	Summary
15/03/2012	Committee referral announced in Parliament, 2nd reading		
31/05/2012	Vote in committee, 2nd reading		
07/06/2012	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A7-0196/2012</a>	Summary
02/07/2012	Debate in Parliament		
03/07/2012	Decision by Parliament, 2nd reading	<a href="#">T7-0270/2012</a>	Summary
29/10/2012	Act approved by Council, 2nd reading		
21/11/2012	Final act signed		
21/11/2012	End of procedure in Parliament		
14/12/2012	Final act published in Official Journal		

### Technical information

Procedure reference	2010/0253(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
	Repealing Directive 95/18/EC <a href="#">1993/0488(SYN)</a> Repealing Directive 2001/12/EC <a href="#">1998/0265(COD)</a> Repealing Directive 2001/13/EC <a href="#">1998/0266(COD)</a> Repealing Directive 2001/14/EC <a href="#">1998/0267(COD)</a> Repealing Directive 2001/14/EC <a href="#">1998/0267(COD)</a> Repealing Directive 2004/51/EC <a href="#">2002/0025(COD)</a> Amended by <a href="#">2013/0029(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 091
Stage reached in procedure	Procedure completed
Committee dossier	TRAN/7/08178

### Documentation gateway

Legislative proposal		<a href="#">COM(2010)0475</a>	17/09/2010	EC	Summary
Document attached to the procedure		<a href="#">COM(2010)0474</a>	17/09/2010	EC	
Document attached to the procedure		<a href="#">SEC(2010)1042</a>	17/09/2010	EC	
Document attached to the procedure		<a href="#">SEC(2010)1043</a>	17/09/2010	EC	
Committee of the Regions: opinion		<a href="#">CDR0297/2010</a>	28/01/2011	CofR	
Economic and Social Committee: opinion, report		<a href="#">CES0540/2011</a>	16/03/2011	ESC	
Committee draft report		<a href="#">PE456.628</a>	19/04/2011	EP	
Amendments tabled in committee		<a href="#">PE467.166</a>	16/06/2011	EP	
Amendments tabled in committee		<a href="#">PE467.167</a>	16/06/2011	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0367/2011</a>	19/10/2011	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0503/2011</a>	16/11/2011	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2012)29</a>	11/01/2012	EC	
Council statement on its position		<a href="#">06804/2012</a>	29/02/2012	CSL	
Council position		<a href="#">18581/2/2011</a>	09/03/2012	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2012)0119</a>	12/03/2012	EC	Summary
Committee draft report		<a href="#">PE483.667</a>	29/03/2012	EP	
Amendments tabled in committee		<a href="#">PE487.974</a>	11/05/2012	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A7-0196/2012</a>	07/06/2012	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2012)006607	19/06/2012	CSL	
Text adopted by Parliament, 2nd reading		<a href="#">T7-0270/2012</a>	03/07/2012	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2012)0426</a>	23/07/2012	EC	Summary
Draft final act		<a href="#">00044/2012/LEX</a>	21/11/2012	CSL	
Follow-up document		<a href="#">COM(2014)0353</a>	13/06/2014	EC	Summary
Follow-up document		SWD(2014)0186	13/06/2014	EC	
Follow-up document		<a href="#">COM(2015)0140</a>	25/03/2015	EC	Summary
Follow-up document		<a href="#">COM(2016)0780</a>	08/12/2016	EC	Summary
Follow-up document		SWD(2016)0427	08/12/2016	EC	
Follow-up document		<a href="#">COM(2017)0143</a>	27/03/2017	EC	Summary
Follow-up document		<a href="#">COM(2019)0051</a>	06/02/2019	EC	Summary
Follow-up document		SWD(2019)0013	06/02/2019	EC	
Follow-up document		<a href="#">COM(2021)0005</a>	13/01/2021	EC	
Follow-up document		SWD(2021)0001	13/01/2021	EC	

Additional information	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

  

Final act	
<a href="#">Directive 2012/34</a> <a href="#">OJ L 343 14.12.2012, p. 0032</a> Summary	
<a href="#">Corrigendum to final act 32012L0034R(01)</a> <a href="#">OJ L 067 12.03.2015, p. 0032</a> Summary	
Final legislative act with provisions for delegated acts	

  

Delegated acts	
<a href="#">2017/2821(DEA)</a>	Examination of delegated act

## Single European railway area. Recast

**PURPOSE:** the recasting of regulatory framework establishing a single European railway area.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** concerned at the decline of the European railway sector witnessed since the 1970s, the European Community adopted a certain number of legislative measures aimed at reviving the railways by gradually creating a ?single European railway area?.

The first railway package Directive 2001/12/EC, Directive 2001/12/EC and Directive 2001/13/EC -adopted at the end of 2000 signalled the desire to reform the regulatory framework to ensure the railway sector's integration at European level and to enable it to face up to the competition from other transport modes on the best possible terms.

With this new regulatory framework, the railway industry has managed to stabilise the volumes transported and, in some Member States, to recover market share from the roads. However, the growth of rail freight in terms of tonnes transported during recent years has not been strong enough to recover the market share of 2.3 percentage points lost between 1995 and 2003. The current economic climate is exacerbating the weak performance of the rail market. Freight services (including rail) have recently suffered a significant drop in activity (between 20% and 50% depending on the market segment) and passenger service activity has also slowed.

The development of the railway sector and its capacity to compete viably with other modes of transport are **still hampered by serious problems** related to (a) inadequate financing and pricing of the infrastructure, (b) persistent barriers to competition and (c) lack of appropriate regulatory oversight. Two problems need to be addressed:

- the level of investment in rail infrastructure development and maintenance remains insufficient in a large number of Member States. In many cases, the quality of the infrastructure continues to decline:
- competition between railway undertakings is limited by various factors. Insufficient transparency of market conditions and a poorly functioning institutional framework continue to make it difficult for new entrants to provide competitive rail services.

There are weaknesses, ambiguities and gaps in the current regulatory framework which need to be addressed to meet fully the initial objectives of the legislation. A recast of the first railway package is considered by the Commission as one of the ways to tackle them.

**IMPACT ASSESSMENT:** based on extensive research and evaluation, the Commission came up with 37 measures that could potentially contribute to achieving each of the objectives of the proposal. A thorough pre-screening of these 37 measures resulted in the selection of a package of 26 measures.

Following the decision to carry out an impact assessment for an initiative to recast the first railway package, an external study was commissioned to *PriceWaterhouseCoopers Advisory(PWC)*. A stakeholders' consultation involving almost 380 organisations was carried out in the context of the external study undertaken by PWC.

Based on the external study, as well as the conclusions of the stakeholders' consultation process, the Commission made a quantitative and qualitative assessment of the impact of the whole package of pre-selected measures. It examined alternative options for the new measures envisaged to modernise the existing regulatory framework, some of which had not previously been subject to impact assessment.

**LEGAL BASE:** Article 91 of the Treaty on the Functioning of the European Union (TFEU).

**CONTENT:** the proposed recast has three horizontal objectives:

- 1) The **simplification**, clarification and modernisation of the regulatory environment in Europe: legal simplification through consolidation and merger is the first horizontal objective underpinning this recast initiative. Elimination of existing cross-references of the three Directives through restructuring and merging into a single rail access code would be instrumental in attaining this objective.
- 2) The **clarification of some provisions of rail access legislation** would facilitate proper transposition and efficient implementation of European Union law in all Member States.
- 3) The **modernisation of** the legislation by eliminating outdated provisions and the introduction of new provisions which respond more appropriately to the

functioning of the market today (e.g. relating to new entrants and full or partial State ownership of infrastructure).

The proposed recast of the first railway package encompasses (a) the adequate financing of and charging for rail infrastructures, (b) the conditions of competition on the railway market, and (c) the organisational reforms needed to ensure appropriate supervision of the market.

The first objective consists of ensuring adequate, transparent and sustainable funding of the infrastructure and, thanks to better predictability of the infrastructure development and access conditions, i) facilitating investments by railway undertakings, together with a more appropriate level and structure of infrastructure charging, ii) improving the competitiveness of rail operators vis-à-vis other transport modes and iii) contributing to the internalisation of environmental costs

The second series of objectives involves i) avoiding distortions of competition due to the use of State funds for commercial activities, ii) preventing commercially sensitive information from being collected by incumbents and used against their potential competitors, iii) eliminating conflicts of interest in the management of rail-related services and iv) increasing their availability for new entrants as well as v) increasing market transparency to ensure effective competition.

Regarding **regulatory oversight**, the proposed recast intends to ensure that regulatory bodies are in a position to carry out their duties effectively, thanks to reinforced independence, extended competencies, and additional means at their disposal.

The main proposed amendments are as follows:

- the separation of accounts between the activities that enjoy a legal monopoly from those that are subject to competition;
- the obligation for Member States to publish medium to long-term railway sector development strategies that make it possible to meet future mobility needs and are based on sound and sustainable financing of the railway system. It will stimulate long lifecycle investments on which the rail industry relies;
- a clarification of the general principles applying to cross-agreements between rail undertakings, between Member States, and between Member States and third countries;
- the updating of the provisions relating to the responsibilities of the regulatory bodies. Their competences will explicitly cover decisions related to access to and charging for rail-related services which are essential to allow market entry and ensure fair competition;
- to enhance cross-border cooperation and improve market entry conditions, regulatory bodies will have to cooperate for the adoption of decisions on access or charging issues relating to international services;
- the rail market monitoring tasks of the Commission will cover items such as rail infrastructure investments, price developments and quality of rail transport services and public service obligations for rail passenger transport.

**BUDGETARY IMPLICATION:** the proposal has no implication for the Community budget.

## Single European railway area. Recast

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The Council discussed ongoing work on a proposal for a directive establishing a single European railway area, intended to simplify, clarify and modernise the regulatory framework for Europe's railway sector so as to improve conditions for investments, increase competition and strengthen market supervision in that sector.

Ministers were invited to give guidance for further examination of the proposal by the Council's preparatory bodies, which have begun work on the provisions on the financing of and charging for railway infrastructure. The ministerial debate, based on questions submitted by the presidency, showed that:

- the publication of national rail infrastructure development strategies is generally seen as an appropriate instrument to stimulate sustainable investments in the sector. Some delegations, however, emphasized that member states' competence for financing rail infrastructure had to be respected. Moreover, due regard should be paid to the principle of annual budgetary decisions when establishing multi-annual plans;
- differentiation of track access charges based on noise performances could provide an incentive for retrofitting noisy wagons and thereby diminishing noise emissions. Several member states, however, underlined the need to ensure equal treatment of rail and road transport and advocated a voluntary application of noise-differentiated charges. It was also mentioned that this measure should primarily focus on heavily populated areas;
- temporary reduction of track access charges for trains equipped with the European train control system (ETCS) could encourage railway undertakings to install this system. Several delegations, though, stressed that they want to keep the right to levy new charges or increase the existing ones in order to compensate for loss of revenue caused by such a reduction.

Other outstanding issues:

- adoption of a business plan: several delegations questioned the proposed obligation to consult interested parties before approving the business plan. Delegations considered this requirement too complex and bureaucratic, which would create difficulties for the infrastructure managers to define all parties to be consulted. Instead, a number of delegations would prefer to inform interested parties and not to establish a legal obligation for consultation. In addition, some Member States stressed that this provision would be too far reaching in particular to infrastructure managers acting on local infrastructure;
- conclusion of multi-annual contracts: delegations raised the same concern over the consequences the five years period would have on the "annual budgetary principle?". Furthermore, delegations expressed the same view concerning the obligation to consult interested parties. Some delegations also disagreed with the deletion of the use of appropriate regulatory measures as an alternative to the conclusion of contractual agreements;
- coordinated methods for charging of railway infrastructure on international train paths: some delegations expressed doubts as to how and to what extent infrastructure managers should cooperate to coordinate charging at international level. Some delegations indicated that specific criteria for international coordination should be defined. In response, the Commission indicated that, according to its proposal, the definition of such criteria would be left to Member States but that additional guidance could be envisaged;
- role of the regulatory body: several delegations argued during the examination of the proposed provisions regarding financing and charging of the railway infrastructure that, through the recast proposal, the role of the regulatory body would be expanded to cover also non-binding opinions and recommendations in the financial field (e.g. business plan, performance targets). Moreover, several delegations reserved their positions on the proposed requirement for prior approval by the regulatory body on the establishment of the

list of market segments, which constitutes the basis for the approval of the levy of "mark-ups", as well as on the main parameters of the performance scheme for the improvement of the performance of the railway network;

- the use of delegated acts: the proposal lays down that the basic principles and parameters of the multi-annual agreements set out in Annex VII of the proposal may be amended by the use of delegated acts. The same method would apply to the criteria for the requirements for costs and charges related to railway infrastructure, as laid down in Annex VIII of the proposal. A majority of delegations expressed a strong reservation on the use of delegated acts for the above purpose.

## Single European railway area. Recast

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The Council reached agreement on a general approach on a draft directive establishing a single European railway area, which is a recast of the "first railway package" consisting respectively of three directives on the development of European railways, licensing of railway undertakings and management of railway infrastructure. The purpose of the recast is to simplify, clarify and modernise the regulatory framework for Europe's railway sector so as to improve conditions for investment, increase competition and strengthen market supervision in that sector.

The European Parliament, whose approval is also required for the adoption of the directive, has not yet established its position at first reading and is expected to deal with this issue in July and September 2011.

A qualified majority of Member States were able to accept the compromise proposal presented by the Presidency, subject to a few amendments. This text includes the following solutions as regards the key issue of the rules on the access by railway undertakings to service facilities and the services supplied in these facilities:

where an operator of service facilities belongs to a body or firm that holds a dominant position in one or more railway service markets for which the facility is used, the operator must be independent from that body to a certain extent in order to guarantee non-discriminatory access by railway undertakings to service facilities and the services supplied in these facilities. Such independence will imply separation of accounts as well as independence in organisational and decision-making terms, but does not require the establishment of a separate legal body and may be fulfilled with the organisation of distinct divisions within a single undertaking;

a facility that has been unused for three years and for the access to which there is a justified demand by railway undertakings must be publicised for lease, unless the facility is undergoing a conversion process.

The main amendment introduced during the meeting concerns the rules on charges for use of infrastructure and services. The infrastructure manager or service facility operator, which has to set the charge for the minimum access package in line with the cost directly incurred as a result of operating the service, will have the possibility of gradually adapting to the methodology for calculating direct costs during a period of five years after the deadline for the transposition of the directive in national law. This provision responds to the fears of some Member States that insufficient cost recovery might lead to the need for the state to strongly subsidise infrastructure managers or operators.

Some delegations, however, were not in a position to agree to the compromise. One of the reasons was the requirement of independence in organisational and decision-making terms. Further, one Member State considers the rules on market liberalisation inappropriate for its small railway network. Another Member State still has concerns that due to its specific conditions, the charging principles will not allow sufficient cost recovery by the infrastructure manager.

## Single European railway area. Recast

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The Committee on Transport and Tourism adopted the report drafted by Debora SERRACCHIANI (S&D, IT) on the proposal for a directive of the European Parliament and of the Council establishing a single European railway area (recast).

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

Exclusions from the scope: Member States may exclude from the application of the Directive vehicles operated or intended to be operated from and to third countries, running on a network whose track gauge is different from the main rail network within the Union.

Infrastructure manager: Members have clarified 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.

Strengthening the role and powers of the national regulatory body: the body should:

- be fully independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant;
- have the necessary administrative capacity in terms of staff and resources to ensure an open and transparent railway market;
- required to take a decision on any complaints, act on its own initiative, investigate in cases of dispute and monitor the development of the market;
- supported by a regulatory department of the Commission. Furthermore the national regulatory body should maintain a database of their draft decisions accessible to the Commission.

Independence of essential functions of an infrastructure manager: In order to guarantee genuine independence from an umbrella organisation and other companies, it is important that every infrastructure manager should have its own IT department. As infrastructure managers must be able to take independent decisions, they must also be fully responsible for their own personnel policies. The Commission shall no later than 31 December 2012 present a proposal for a Directive containing provisions relating to the separation of infrastructure management and transport operations as well as a proposal for opening the domestic rail passenger market which does not detract from the quality of rail transport services and safeguards public service obligations.

Transparent separation of accounts: the strict separation of accounts between infrastructure manager and railway undertaking must be

ensured. Public funds allocated to one of the fields of activity should not be transferred to another field of activity. This prohibition should be clearly displayed in the accounting rules of each field of activity. The Member State and the national regulatory body should ensure the effective application of this prohibition.

Sound financing of the infrastructure manager: Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union. For this purpose, they shall publish at the latest two years after the entry into force of this Directive and after consultation of interested parties and stakeholders, including local and regional authorities concerned, trade unions, sectoral unions and users' representatives, a rail infrastructure development strategy with a view to meeting future mobility needs based on sound and sustainable financing of the railway system. The strategy shall cover a period of at least seven years and be renewable.

Whenever revenues are not sufficient to cover the financing needs of the infrastructure manager, Member States shall also provide the infrastructure manager with financing consistent with its tasks, the size of the infrastructure and financial requirements, in particular in order to cover new investments. The infrastructure manager shall ensure that applicants are consulted in a non-discriminatory manner before the investment plan is approved as far as the condition of access and use, and the nature, the provision and the development of the infrastructure are concerned.

Conditions of access to railway infrastructure: in no event must the conditions of access to railway infrastructure result in it being impossible for passengers to obtain information on, or to purchase a ticket for, travel from one location to another, regardless of the number of railway transport operators providing, in whole or in part, passenger transport services between those two locations.

Conditions of access to services: where the operator of the service offers any of the range of services described in Annex III, point 3 as additional services, he shall supply them upon request to railway undertakings in a non-discriminatory manner. When refusing access to its service facility, the operator of the service facility shall propose an economically and technically viable alternative and justify its refusal in writing.

Where the service facility has not been in use for at least one year and interest by railway undertakings for access to this facility has been expressed to the operator of such a facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent for use for activities related to the railway sector unless the operator of such facility demonstrates that an on-going process of reconversion prevents its use by a railway undertaking

Scope of market opening: the Commission shall make the necessary arrangements to monitor technical, social and economic conditions and market developments, including employment development, as well as compliance with relevant Union legislation in European rail transport. The Commission shall monitor the degree of market opening, employment and social conditions and the degree of harmonisation, particularly in the field of social rights, between and within Member States.

Safety: an amendment strengthens the respect of safety and labour law, making it an essential requirement to good repute which railway undertakings have to fulfil when applying for a license.

Requirements relating to financial fitness and professional competence: licensing authorities shall verify financial fitness by means of a railway undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. The requirements relating to professional competence shall be met when an applicant railway undertaking can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence. The undertaking shall also demonstrate at the time of the application that it holds a safety certificate as defined in Article 10 of Directive 2004/49/EC.

Network statement: Members consider that the network statement should include information concerning: (i) the nature of the infrastructure which is available to railway undertakings and the conditions of access to it; (ii) charging principles and tariffs; (iii) principles and criteria for capacity allocation; (iv) procedures for dispute resolution and appeal. The specific details of each section can be modified by the Commission in order to allow flexibility. Moreover, where quality of infrastructure is declining this should be communicated to users to act as an early-warning system.

Principles of charging: the proposal provides that the infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train. Members add that such modification of infrastructure charges shall allow for compensation for investments in retrofitting rail vehicles with the most economically viable low-noise braking technology available. Member States shall ensure that the introduction of such differentiated charges shall not have any adverse effect on the financial equilibrium of the infrastructure manager.

Improving performance: in order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the cost of delays and the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

Special measures to be taken in the event of disturbance: infrastructure managers shall have action plans to deal with accidents or technical failures. This amendment provides that if a train path is cancelled for any reason other than force majeure, alternative solutions or a reimbursement of the charge shall be provided.

Cooperation between national regulatory bodies and powers of the Commission: the Commission shall set up a database to which national regulatory bodies shall provide data on all complaint procedures, such as the dates of complaints, start of own-initiative procedures, all draft and final decisions, parties involved, main issues of the procedures and problems of interpretation of railway law, etc).

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, draw up a legislative proposal establishing a European regulatory body. This body shall have a supervisory and arbitration function to deal with cross-border and international problems and to hear appeals of decisions taken by national regulatory bodies.

Annexes and the scope of the delegated acts: the amendments aim to give a stricter framework for the delegation of powers to the Commission regarding the modification of non-essential elements of the Directive for a limited duration (five years).

## Single European railway area. Recast

The European Parliament adopted by 526 votes to 80, with 36 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council establishing a single European railway area (recast).

It recommended that the European Parliaments position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

Exclusions from the scope: 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 of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network.

In addition, Member States may exclude from the application of the Directive vehicles operated or intended to be operated from and to third countries, running on a network whose track gauge is different from the main rail network within the Union.

Infrastructure manager: Parliament has clarified 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.

Strengthening the role and powers of the national regulatory body: the body should:

- be fully independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant;
- have the necessary administrative capacity in terms of staff and resources to ensure an open and transparent railway market;
- required to take a decision on any complaints, act on its own initiative, investigate in cases of dispute and monitor the development of the market;
- supported by a regulatory department of the Commission.

Furthermore the national regulatory body should maintain a database of their draft decisions accessible to the Commission.

Independence of essential functions of an infrastructure manager: in order to guarantee genuine independence from an umbrella organisation and other companies, it is important that every infrastructure manager should have its own IT department. As infrastructure managers must be able to take independent decisions, they must also be fully responsible for their own personnel policies. The Commission shall no later than 31 December 2012 present a proposal for a Directive containing provisions relating to the separation of infrastructure management and transport operations as well as a proposal for opening the domestic rail passenger market which does not detract from the quality of rail transport services and safeguards public service obligations.

However, Parliament stipulates, in managing the traffic on the network, effective cooperation between railway undertakings and infrastructure managers is essential.

Transparent separation of accounts: the strict separation of accounts between infrastructure manager and railway undertaking must be ensured. Public funds allocated to one of the fields of activity should not be transferred to another field of activity. This prohibition should be clearly displayed in the accounting rules of each field of activity. The Member State and the national regulatory body should ensure the effective application of this prohibition.

Member States may also provide that this separation shall require the organisation of distinct divisions within a single undertaking or that the infrastructure and transport services shall be managed by separate entities in order to ensure the development of competition, continued investment and the cost-effectiveness of service provision of the railway sector.

Whatever the type of undertaking, all rail operators must respect legislation on social protection and health so as to avoid the practice of social dumping and unfair competition.

Sound financing of the infrastructure manager: Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union. For this purpose, they shall publish at the latest two years after the entry into force of this Directive and after consultation of interested parties and stakeholders, including local and regional authorities concerned, trade unions, sectoral unions and users' representatives, a rail infrastructure development strategy with a view to meeting future mobility needs based on sound and sustainable financing of the railway system. The strategy shall cover a period of at least seven years and be renewable.

Whenever revenues are not sufficient to cover the financing needs of the infrastructure manager, Member States shall also provide the infrastructure manager with financing consistent with its tasks, the size of the infrastructure and financial requirements, in particular in order to cover new investments. The infrastructure manager shall ensure that applicants are consulted in a non-discriminatory manner before the investment plan is approved as far as the condition of access and use, and the nature, the provision and the development of the infrastructure are concerned.

Conditions of access to railway infrastructure: in no event must the conditions of access to railway infrastructure result in it being impossible for passengers to obtain information on, or to purchase a ticket for, travel from one location to another, regardless of the number of railway transport operators providing, in whole or in part, passenger transport services between those two locations.

Conditions of access to services: where the operator of the service offers any of the range of services described in Annex III, point 1 as additional services, he shall supply them upon request to railway undertakings in a non-discriminatory manner.

When refusing access to its service facility, the operator of the service facility shall propose an economically and technically viable alternative and justify its refusal in writing.

An amendment stipulates that newly built maintenance and other technical facilities developed for new high-speed rolling stock, referred to in Commission Decision 2008/232/EC concerning a technical specification for interoperability relating to the rolling stock sub-system of the trans-European high-speed rail system, may be reserved to the use of one railway undertaking for a period of ten years from the start of their operation.

Where the service facility has not been in use for at least one year and interest by railway undertakings for access to this facility has been

expressed to the operator of such a facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent for use for activities related to the railway sector unless the operator of such facility demonstrates that an on-going process of reconversion prevents its use by a railway undertaking.

Scope of market opening: the Commission shall make the necessary arrangements to monitor technical, social and economic conditions and market developments, including employment development, as well as compliance with relevant Union legislation in European rail transport. The Commission shall monitor the degree of market opening, employment and social conditions and the degree of harmonisation, particularly in the field of social rights, between and within Member States.

Safety: an amendment strengthens the respect of safety and labour law, making it an essential requirement to good repute which railway undertakings have to fulfil when applying for a license.

Requirements relating to financial fitness and professional competence: licensing authorities shall verify financial fitness by means of a railway undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. The requirements relating to professional competence shall be met when an applicant railway undertaking can demonstrate that it has or will have a management organisation which possesses the knowledge or experience necessary to exercise safe and reliable operational control and supervision of the type of operations specified in the licence.

The undertaking shall also demonstrate at the time of the application that it holds a safety certificate as defined in Article 10 of Directive 2004/49/EC.

The level of coverage deemed adequate may be differentiated to take into account the specificities of services, in particular for railway operations for cultural or heritage purposes running on the rail network for the general public.

Network statement: Members consider that the network statement should include information concerning: (i) the nature of the infrastructure which is available to railway undertakings and the conditions of access to it; (ii) charging principles and tariffs; (iii) principles and criteria for capacity allocation; (iv) procedures for dispute resolution and appeal. The specific details of each section can be modified by the Commission in order to allow flexibility. Moreover, where quality of infrastructure is declining this should be communicated to users to act as an early-warning system.

Scrutiny by national parliaments: without prejudice to the management independence laid down in the directive and provided that this right has been directly conferred by constitutional law at least two years before the date of entry into force of this Directive, the national parliament may have the right to scrutinise and, when appropriate, review the level of charges determined by the infrastructure manager. Such review, if any, shall ensure that charges comply with this Directive, the established charging framework and charging rules.

Principles of charging: the proposal provides that the infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train. Parliament adds that such modification of infrastructure charges shall allow for compensation for investments in retrofitting rail vehicles with the most economically viable low-noise braking technology available. Member States shall ensure that the introduction of such differentiated charges shall not have any adverse effect on the financial equilibrium of the infrastructure manager.

Improving performance: in order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the cost of delays and the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time.

Special measures to be taken in the event of disturbance: infrastructure managers shall have action plans to deal with accidents or technical failures. An amendment provides that if a train path is cancelled for any reason other than force majeure, alternative solutions or a reimbursement of the charge shall be provided.

Cooperation between national regulatory bodies and powers of the Commission: the Commission shall set up a database to which national regulatory bodies shall provide data on all complaint procedures, such as the dates of complaints, start of own-initiative procedures, all draft and final decisions, parties involved, main issues of the procedures and problems of interpretation of railway law, etc).

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, draw up a legislative proposal establishing a European regulatory body. This body shall have a supervisory and arbitration function to deal with cross-border and international problems and to hear appeals of decisions taken by national regulatory bodies.

Annexes and the scope of the delegated acts: the amendments aim to give a stricter framework for the delegation of powers to the Commission regarding the modification of non-essential elements of the Directive for a limited duration (five years).

## Single European railway area. Recast

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Although the Council agrees with the Commission as regards the objective of the proposal, the Council's approach involves several modifications of the original proposal.

A number of the proposed provisions are not acceptable because they are considered to have a too far-reaching impact, in particular on the conditions for access by railway undertakings to service facilities, on the principles of charging for the use of railway infrastructure and of service facilities as well as on the functions of the regulatory body.

Resulting from this approach, the Council's first reading position modifies, to a certain extent, the original Commission proposal by redrafting it and deleting several provisions of the text. This implies that the amendments introduced in the European Parliament's first-reading opinion related to these deleted provisions cannot be accepted by the Council.

Key policy issues are as follows:

(1) Conditions of access by railway undertakings to service facilities and to the services supplied in these facilities: in order to provide proper market access for new railway undertakings and thereby increase competition in the railway sector, the Commission proposes to introduce

independence requirements, namely legal, organisational and decision-making independence for the management of service facilities and for rail transport provision. The Council considers that the Commission proposal needs to be modified in this respect, in order to replace the reference to "legal independence" by the requirement of independence "in organisational and decision-making terms".

More specifically, the Council introduces a distinction between the essential services facilities for which an increased level of competition needs to be guaranteed, on the one hand, and the remaining services facilities, on the other hand. For the latter, the Council provides for the separation of accounts only; for the essential services facilities whose access needs to be improved, the requirement of independence in organisational and decision-making terms is introduced by the Council.

Moreover, in its original text, the Commission proposes the introduction of "use-it or lease-it" provisions for the management of rail-related service facilities. When a service facility has not been in use for a certain time period, it must be made available by its owner (on a rent or leave basis) to another interested party. The Council agrees with the proposed approach but suggests setting the time period of three years against two years in the Commission original proposal. In addition, the Council considers that the railway undertaking will have to express to the operator an interest to use the facility which shall be based on demonstrated needs. Finally, the Council adds that the operator shall have the right to prevent the lease and rent of that facility by demonstrating that a process of reconversion is going on.

(2) Principles of charging and exceptions to charging principles:

Direct costs: the Council supports the principle that the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service but considers that Annex VIII-Point 1 is to be removed and that the methodology for the calculation of direct costs incurred as a result of operating the train services is to be adopted through implementing acts in order to ensure the harmonised implementation of this Article. Finally, the Council also introduces the possibility for the infrastructure manager to decide to gradually adapt to the methodology for calculating direct costs during a period of five years after the deadline for transposition of the Directive.

Noise charging: the Council considers that the Commission approach concerning the charging for the cost of noise effects needs to remain an optional system for Member States so as to avoid negative financial implications for infrastructure managers. Furthermore, the possibility for the Commission to adopt implementing measures to set out the modalities to be followed for the application of the charging for the cost of noise effects is introduced, ensuring that differentiation of charges takes into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of the population affected and the train composition with an impact on the level of noise emissions.

European Train Control System: the proposal presented by the Commission provides that trains equipped with the European Train Control System (ETCS) shall enjoy a temporary reduction of the infrastructure charge. The Council supports an optional approach and is opposed to any compulsory measure in this respect.

(3) Financing of the infrastructure manager and infrastructure cost and accounts: the proposal stipulates that infrastructure managers shall be given incentives to reduce the costs of providing infrastructure and the level of access charges. It is proposed that the implementation of these incentives can only be done through a contractual agreement between the national competent authority and the infrastructure manager on infrastructure costs and access charges.

The Council agrees in principle with the Commission approach on this issue but prefers to retain the possibility to apply regulatory measures for the implementation of the above incentives, as an alternative to the above mentioned contractual agreements, as well as to reduce the minimum duration of contractual agreements to three years. In addition, the Council proposes to clarify that it is the responsibility of Member States to determine the level of public funding to be provided for infrastructure financing.

(4) Separation between infrastructure managers and railway undertakings: the Council shares the Commission approach not to tackle the separation between infrastructure managers and railway undertakings in the context of the recast proposal establishing a single European railway area.

(5) Functions of the Regulatory Body: although the Council generally follows the Commission approach as far as the reinforcement of the regulatory bodies is concerned, it however considers it necessary to review the proposed provisions regarding independence requirements for regulators' staff. Moreover, the Council makes optional the possibility for the regulator to intervene on financing issues and the publication of regulatory accounts is not accepted by the Council.

The Council also decides to give the regulatory body the power to monitor the competitive situation in the rail services markets and to adopt appropriate measures to correct undesirable

developments in these markets, without prejudice to the competences of the national competition authorities for securing competition.

(6) Delegated acts and implementing acts: in the initial Commission proposal, delegated acts are proposed as an instrument to amend various annexes. The Council considers however that the annexes and sections for which the Commission should be empowered to adopt delegated acts have to be reduced and be limited to certain amendments to Annexes V, VIII point 4c, IX and X. The Council removes therefore the possibility for the Commission to adopt amendments to certain Annexes.

Further EP amendments not included in the Council's first-reading position concern the:

- inclusion of additional requirements relating to information and ticketing for passengers;
- provisions governing the deadlines for the decisions of national regulatory bodies;
- extension of the scope of market monitoring to employment and working conditions as well as to the investments in railway infrastructure;
- requirement according to which the applicant railway undertaking shall also demonstrate at the time of the application that it holds a safety certificate;
- obligation to publish the network statement in English;
- restrictive deadline imposed to the infrastructure manager to inform interested parties about unscheduled maintenance work;
- transposition deadline of 12 months;
- reinforced provisions concerning services available to passengers at station;
- inclusion of a reference to Directive 2009/72/EC as far as the supply of traction current is concerned;
- extension of the information for Rail Market Monitoring as referred to in Annex IV. Point 1 to the collection of data on incidents, accidents and serious accidents;
- additional requirements relating to cover for civil liability.

## Single European railway area. Recast

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While still being in line with the general objective of simplification and increasing transparency by consolidating three existing directives and their modifications, the Council weakened the Commission proposal concerning access to rail-related services, infrastructure financing, infrastructure charges and powers of the regulatory body. In some cases, the Council's position confirms existing law without further improvement despite the various reasons for such efforts, such as: (a) the adequate financing of and charging for rail infrastructures, (b) the conditions of competition on the railway market, and (c) the organisational reforms needed to ensure appropriate supervision of the market:

In this regard, the Council's position would be improved by taking into account some amendments adopted by the European Parliament.

The Commission recalls that the present proposal is particularly important to reach the objectives set out in its communication "[Roadmap to a Single European Transport Area Towards a competitive and resource efficient transport system](#)" adopted on 28 March 2011. It should also pave the way to new Commission initiatives in 2012 to foster further market integration in rail transport and should therefore be adopted by co-legislators as soon as possible.

Despite the weakening of several provisions, the Commission considers that the Council's position reflects the main objectives of its proposal and therefore believes that the legislative process and the discussion with the European Parliament should continue in second reading.

## Single European railway area. Recast

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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 separation 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.

# Single European railway area. Recast

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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.

## Single European railway area. Recast

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OPINION of the Commission on the European Parliament's amendment to the Council's position regarding the proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (recast)

The Commission recalls that following a number of informal contacts that took place between the Council, the European Parliament and the

Commission with a view to reaching an agreement on this dossier at second reading, an overall compromise amendment was voted by the plenary on 3 July 2012. The Commission endorses this comprehensive compromise amendment on substance.

The most important changes introduced by the comprehensive amendment of the European Parliament to the Council's position are as follows: i) infrastructure financing; ii) infrastructure charging; iii) market access conditions; iv) separation between infrastructure managers and railway undertakings; v) regulatory oversight; vi) transposition and implementation deadlines; and vii) the scope of application.

The second reading agreement confers on the Commission implementing powers in order to ensure uniform conditions for the implementation of the Directive. It makes sure that those powers will be exercised in accordance with Regulation (EU) No 182/2011 for the adoption of implementing acts.

The agreement refers to nine specific cases where the third subparagraph of Article 5(4) of Regulation (EU) N° 182/2011 shall apply. In those cases, the Commission shall not adopt an implementing act if the committee delivers no opinion. In three other cases, the normal procedure under Article 5(4) shall apply.

Cases where Article 5(4) subparagraph 2, point b) of Regulation 182/2011 for the adoption of implementing acts will apply have been justified by reasons of their potential impact on public finances or on the functioning of the rail market. However such justification is not reflected in a recital. Given that it is an exception to the general rule established by Article 5 (4), the Commission considers that recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the legislator, but must be interpreted in a restrictive manner and thus must be justified.

The agreement on the comitology procedures has led the Commission to make a statement on the matter.

## Single European railway area. Recast

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**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.

## Single European railway area. Recast

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On page 58, first subparagraph of Article 55(3):

for:

?3. ?, where relevant, be 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.?

read:

?3. ?, where relevant, be 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.?

On page 62, Article 65, first paragraph:

for:

?? repealed with effect from 15 December 2012, ??,

read:

?? repealed with effect from 17 June 2015, ??.

## Single European railway area. Recast

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This report is the fourth report on the development of the rail market. Data for this report has been collected mostly from the Member States through questionnaires and Eurostat, but has been completed by other sources such as a Eurobarometer survey (service quality), publicly available railway fare information, annual financial reports, as well as data for the State aid scoreboard.

Development of the market: as far as the passenger rail market is concerned, the share of rail travel journeys in the EU remains modest compared to other transport modes like car and air. The modal share of rail in 2011 has remained stable at 6.2%, as in 2010.

In terms of market segments, half of European railway journeys can be assimilated to regional and suburban services and half relate to long-distance/intercity or high-speed services (27% of all pass-km in 2011). High-speed trains almost exclusively dominate the long-distance market in some Member States: in 2011, in France and Spain respectively, 58% and 49% of total passenger-km were travelled in high-speed trains. Since 1995, rail travel has grown most compared to other modes in the United Kingdom (+70%), Sweden (+42%), France (+37%) and Belgium (+26%). International rail services, which represented 6% of rail passenger traffic in 2012, have continued their growth (+25% in the period 2004-2011) by growing some 2% in 2011 and some 13% in 2012.

There are signs however that international passenger traffic is stagnating in important international rail markets like Belgium and the Netherlands. Finally, rail international services in crisis-hit Member States have taken a toll.

Unlike passenger rail, rail freight is far more international: some 47% of all tonne-km in the EU were international in 2011 (out of which 9% of all tonne-km relate to transit). Germany and its rail infrastructure play a central role in rail freight, representing alone 27% of all EU tonne-km. Rail freight has lagged behind the overall growth of freight in the EU rail freight has only grown 5% in tonne/km since 1995 while the overall growth for all modes has been 22%.

This begs the question as to whether specialisation of rail freight in commodities and basic industrial products does not make its business cycle particularly vulnerable to economic cycles (evolution of commodity prices), energy policies (choices of specific energy sources) and inventory management (commodities cost less to inventory than finished industrial products). Additionally, to be successful, railway freight needs to move into higher-added value "niches" and increase average transport distances.

New areas covered: Directive 2012/34/EU has broadened the scope of the Commission's regular reporting as compared to the previous Directive<sup>2</sup> which now includes the evolution of the internal market of service facilities and framework conditions such as investments in infrastructure, price developments, service quality, public service obligations and the development of employment and related social conditions and that are presented for the first time in the Rail Market Monitoring Scheme (RMMS) report.

Services to be supplied to railway undertakings: there are some 22 000 stations in the EU, out of which some 250 are big stations that have more than 25.000 travellers/day. On average, Europeans are fairly satisfied with stations (satisfaction rates have slightly increased since 2011). Highest levels of satisfaction with stations were reached in the UK (73%), Ireland (71%) and Luxembourg (70%). The below-average satisfaction rates are found in Germany (40%), Italy (34%) and Central- and South-Eastern Europe.

68% of Europeans are satisfied with the provision of information about train timetables and 67% with the ease to buy tickets. Europeans are less positive as regards cleanliness of stations (57% of satisfaction) and access to complaint-handling mechanisms (37%).

Only 37% of Europeans report high or good satisfaction levels with all the aspects of accessibility of persons with reduced mobility. Satisfaction is highest in the UK (61%), Ireland (56%) and France (52%). Questions of accessibility are essential to improve the modal share of rail, in particular in the context of the ageing of the European population. Rail appears not to be reaching some 19% of the EU population because of accessibility issues.

Investment in infrastructure: in terms of investments in the network, slightly less than EUR 29 billion appear to have been invested in the conventional network in 2012 (some 7% more than 2011) and some EUR 34.5 billion in the whole rail network (including high-speed). As far as the conventional network is concerned, the shares of maintenance (29%), enhancement (36%) and renewal (35%) appear to be roughly equal in 2012.

Railway-related projects financed by EU funds, either under TEN-T or structural and cohesion funds, have amounted to some EUR 22 billion through the period 2007-2013, hence some EUR 3 billion/year, representing some 2% of the EU annual budget. Much of the funding for rail projects was concentrated in Italy, Spain, Poland and the Czech Republic over the 2007-2013 period.

Price trends: nominal prices for railway services have increased by 4% in 2012 compared to 2011, based on the harmonised consumer price index (HCPI) which includes urban transport. Major increases took place in Central and South-Eastern Europe (in Slovakia, the increase

reached 35%). In Sweden, prices have decreased by 1%.

The variation of fares greatly depends on the structure of financing of the railway market. Public service obligations normally have regulated prices, whereas commercial services have unregulated prices.

Rail fares in some commercial lines can vary strongly in relative terms. The report highlights that from the consumers point of view, day returns in some routes remain costly, even if sometimes rail loyalty cards can halve fares. Booking a weekend trip 2 weeks in advance between Paris and London can still cost EUR 260 and an immediate departure from Madrid to Barcelona can cost EUR 173.

## Single European railway area. Recast

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The Commission presented a report on the cooperation between regulatory bodies under Article 63(2) of Directive 2012/34/EU establishing a single European railway area.

Directive 2012/34/EU obliges Member States to establish regulatory bodies responsible for monitoring the competitive situation in the rail services market. It created a European network of rail regulatory bodies (the network) that convenes at regular intervals, exchanging information about their work. The Commission is a member of the network, and coordinates and supports its work.

In addition to cooperation within the network, the Directive requires regulatory bodies to assist each other in market monitoring tasks and to cooperate on handling complaints and investigations, including by setting up specific working arrangements.

Cooperation between the regulatory bodies: according to the report, the regulatory bodies have worked closely together on sharing information about their work, best practices and decision making.

With the exception of Lithuania and Ireland, the regulatory bodies of all Member States obliged to establish independent regulators have regularly participated in the networks meetings. Some regulators already have substantial experience (e.g. Austria, Denmark, France, Germany, Netherlands, United Kingdom) while others have only handled a few or no cases (e.g. Finland, Greece, Lithuania, Luxemburg).

The Commission has facilitated cooperation. It explained policy proposals, presented judgments of the European Court of Justice concerning transposition and implementation of the first railway package, and provided recommendations on how to apply Directive 2012/34/EU.

In the context of establishing rail freight corridors, regulatory bodies have worked together to develop systems and working arrangements for handling cases referring to corridor issues.

Cooperation on concrete cases has remained limited with only a small number of cases concerning international services and requiring consultation and exchange of information between regulators having been brought to the attention of regulatory bodies so far.

At the same time, there is a number of areas in which coordination between regulatory bodies needs to be further improved. The Commission considered that the existing legal framework provides for a range of possibilities for improvement, such as the adoption of implementing acts setting out common decision-making principles and practices or the development of an electronic tool for exchanging information and discussion on cases handled by regulatory bodies.

Regular cooperation and exchange of best practices within the network of regulatory bodies is also expected to contribute to the development of frameworks for information sharing and cooperation with national safety and licensing authorities.

Since only a limited number of cases with a cross-border dimension have been brought to the attention of regulatory bodies so far, the Commission concluded that there is not yet sufficient evidence for the effectiveness of existing cooperation arrangements.

However, recent developments, in particular at corridor level where more and more paths are crossing several corridors, indicate that more integrated and effective regulatory oversight may be required as the implementation of rail freight corridors and development of the single European Railway area progress further.

It is recalled that in its [legislative resolution](#) of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/34/EU, the European Parliament adopted an amendment to the Directive, requiring the Commission to adopt a legislative proposal to replace the network of regulatory bodies by a European regulatory body dealing with cross-border issues and appeals against decisions of national regulatory bodies by 31 December 2019.

The Commission will therefore continue to monitor the developments as regards cooperation between regulatory bodies and, where appropriate, assess the need for measures to reinforce integrated regulatory oversight.

## Single European railway area. Recast

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In accordance with recast Directive 2012/34/EU, the Commission presented its fifth report on rail market surveillance. The main topics covered are:

The state of the Union's rail network: the total length of the rail network was approximately 220 000 kilometres in 2014, an increase of about 2% compared to 2009. Since 2009, 2 800 kilometres of electrified lines have been added and large-scale projects were launched to electrify a large part of the networks in Denmark and the United Kingdom.

The speed of movement differs significantly between the Member States. Significant investments have been made to upgrade the rail network in Eastern Europe and to develop high-speed lines in Western Europe.

The report notes that, since 2009, volumes of passenger rail traffic (measured in passenger-kilometers) have remained relatively stable. In contrast, rail freight volumes in tonne-kilometres fell sharply in 2009 and have not returned to their initial volumes. By 2014, the modal share of rail in land freight transport was 18%, virtually the same proportion as a decade ago.

Framework conditions:

- with regard to the evolution of infrastructure charges, progress is mixed. The situations in the Member States are very different. In

- most Member States, charges for freight trains are higher than those for passenger trains, while in Germany, Spain, Belgium, France, Luxembourg and Portugal, the situation is the reverse. Freight charges in the Baltic States are particularly high;
- infrastructure spending increased between 2011 and 2014, from EUR 29 billion to EUR 45 billion. Total expenditures were higher in the United Kingdom and France. More than EUR 33 billion has been allocated by the EU to investments in railways in the form of grants under the current Union financial framework (2014-2020);
  - the evolution of prices for rail transport at Union level is difficult to assess since the tariffs applied to passenger transport services vary considerably from one Member State to another. Comparable data on punctuality between Member States are difficult to obtain. The punctuality of long distance services is generally worse than that of regional and local services. As regards safety, rail transport remains one of the safest modes of transport. Between 2010 and 2014, figures for fatalities and major accidents all declined;
  - with regard to market opening, the report notes that, on average, the market share of competing cargo operators (15% in 2006) more than doubled in 2014. By the end of 2014, rail freight transport services were still 100% operated by the historic operator in Finland, Greece, Ireland, Lithuania and Luxembourg. The market shares of competitors in passenger transport markets are lower, i.e. well below 20% in all Member States with the exception of Poland and the United Kingdom;
  - there are still barriers to increasing the efficiency of rail services. While comparisons between national systems are often irrelevant, there is nevertheless a broad consensus that European railways are faced with problems of cost, quality of services and market share.

Implementation of the institutional and legal framework: over the past two decades, European legislation has sought to encourage competitiveness and market opening while establishing measures to improve interoperability and security. With the adoption of the fourth railway package, the period of structural changes in the railway sector should be completed.

However, despite positive developments such as the increase in passenger traffic volumes and investment in infrastructure, or the gradual opening of national rail markets, the targets set for the rail sector in the 2011 Transport White Paper cannot be achieved if the current pace continues.

In the coming years the Commission will focus on the implementation of the legislation in force in order to ensure that EU legislation is well understood by the sector.

The Commission is currently preparing the implementing act on the recast directive on access to services and facilities and the delegated act on scheduling rules. It has also started the revision of the [technical specification for interoperability relating to the rolling stock subsystem noise](#), the [Rail Passenger Rights Regulation](#) and the [Combined Transport Directive](#).

The ongoing evaluations of the [Rail Freight Regulation](#) and the [Train Drivers Directive](#) could lead to updates of these acts in the coming years.

## Single European railway area. Recast

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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.

## Single European railway area. Recast

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In accordance with Directive 2012/34/EU, the Commission presents its sixth report on monitoring development of the rail market.

The report provides an overview of the main developments in rail markets in the context of EU rail market policy objectives. The Commission notes that this is the first report to draw on the reporting questionnaire set out in Commission Implementing Regulation (EU) 2015/1100 on rail market monitoring (the RMMS Regulation), which was applicable from 1 January 2016. The report covers a broad range of topics such as the evolution of the internal market in rail services, the infrastructure and services available to railway undertakings, the framework conditions (including charges), the state of the network, the utilisation of access rights and barriers to more effective rail services.

### Evolution of rail services

EU railways continue to grow, with passenger volumes in particular increasing significantly between 2011 and 2016. Rail passenger traffic continued to grow 1.7 % per year. Rail passenger traffic is mostly domestic, with only 6 % crossing borders in 2016. At the same time, rail markets are gradually opening up and safety levels remain high. Between 2011 and 2015, rail travel was more than 25 times safer than travelling by car.

The industry is gradually becoming more responsive to customer needs. According to a Eurobarometer survey published in September 2018, 66 % of Europeans are satisfied with the frequency of passenger trains, 59 % with punctuality and reliability, and 55 % with travel information during journeys, particularly when there is a delay. These figures represent significant improvements compared to a similar survey carried out in 2013.

The report notes that rail has the potential to play a significant role in accelerating the reduction in transport emissions. Rail only accounts for 2 % of total EU energy consumption in transport, while it carried 11.2 % of freight and 6.6 % of passengers of all transport modes in 2016.

The total length of the EU rail network in 2016 was around 221 000 line kilometres (1.6 % lower than in 2011). Around 54 % of the EU network was electrified in 2016, with an additional 2 097 km of electrified route since 2011 (+1.7 %). The EUs high-speed network stretched to over 8 400 line kilometres by the end of 2017, and has more than doubled in length since 2003.

### Rail freight

Unlike the passenger market, the Commission notes that freight volumes remain volatile and led to a loss of modal share in comparison with road transport in 2016. Since the peak in 2011 (19 %), the rail share in EU land freight has decreased, although managed to remain at around 17 % in 2016, while the road share has increased from 75 % to 76 %. Rail freight traffic has struggled to recover from the significant drop in volumes experienced in 2009, the low point of the economic crisis. The international nature of these services makes them sensitive to interoperability barriers and cross-border coordination issues. To tackle the situation, the Commission is pursuing an agenda of complementary initiatives and measures. The Commission's long-standing policy of achieving interoperability (including the efficient and coordinated deployment of ERTMS) has been strengthened recently, with the focus on solving practical cross-border operational issues.

### Degree of market opening

The rail freight market was opened up to competition in 2007. In 2016, new operators competing with national incumbents were active in all countries except Greece, Ireland, Lithuania and Luxembourg, and in half of them the market share of competitors was more than 40 %. Between 2011 and 2016, the market share of competitors steadily increased in all EU countries. Competitors lost market share only in Sweden and Estonia, with their market share in Estonia falling from 41 % to 20 %.

While the international passenger market has been opened up to competition since 2010, Member States continue to regulate access to their domestic passenger markets until the [Fourth Railway Package](#) is implemented. According to reported figures, only half of the Member States have competitors operating in the commercial passenger market. Their market share is generally higher than 10 %, and in four Member States new entrants offer almost all of the commercial services.

The report goes on to note that implementation of the Fourth Railway Packages technical pillar from June 2019 will improve interoperability between national rail networks. It will also cut red tape for operations beyond one single Member State and strengthening the role of the European Union Agency for Railways. The market pillar completes the opening of domestic markets as of December 2019 and imposes the principle of competitive tendering as the rule for public service contracts in the EU by December 2023 at the latest, with direct award only allowed in exceptional cases.

## Employment and social conditions

According to the RMMS data reported by the Member States and Norway, at the end of 2016 just over 1 million people were employed in the European railway sector, around 600 000 of them by railway undertakings and 440 000 by infrastructure managers. The workforce is predominantly male; on average only 21 % were women. An ageing workforce continues to be a concern, especially for Spain, Greece and Italy, where over 50 % of the workforce were over 50 years old in 2016.

## Outlook

The Commissions infrastructure development policy in the form of the Trans-European Transport Network (TEN-T) policy aims to improve infrastructure by addressing bottlenecks and missing links. Under the next financial period, the Commission has proposed to use Connecting Europe Facility 2, Cohesion Fund, European Regional Development Fund and Invest EU financial support to speed up also rail digitalisation. To help the rail industry access finance, the Commission is developing a methodology to assess the green components in rail projects under its action plan on sustainable finance. The rail freight corridors remain a key part of the Commissions policy to boost rail freight. The [Rail Freight Regulation](#) and Train Drivers Directive are still being evaluated. To bolster rail freight, in November 2017 the Commission proposed [amending the Combined Transport Directive](#) as part of its second mobility package to provide new and more effective support measures for shifting freight from road to rail.

Lastly, the Commission notes that rail cannot be considered in isolation from other modes: its competitiveness also depends on the framework for intermodal competition. Accordingly, the Commission is striving for equal conditions for intermodal competition, such as through the mobility package including the [amendment of the Eurovignette Directive](#). The Commission has also commissioned a comprehensive study on the internalisation of external costs in transport. This will help it to assess the extent to which the user pays and polluter pays principles are implemented in the Member States for all modes of transport.