

Single European railway area. Recast

2010/0253(COD) - 09/03/2012 - Council position

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.