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PROGRESS REPORT

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Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 2 - 3 December 2010***

Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast)

- *Progress report and Policy debate*

Introduction

1. On 20 September 2010, the Commission submitted to the European Parliament and the Council the above mentioned proposal with the aim of recasting the first railway package in order to simplify, clarify and modernise the regulatory environment in Europe's railway sector whilst making progress towards the Europe 2020 strategy.
2. The objective of the recast initiative is to provide legal simplification through consolidating and clarifying the legislation on access to the rail market. This would facilitate proper transposition and efficient implementation of Union law in all Member States. Furthermore, the intention is to update the legislation by eliminating outdated provisions and by introducing new provisions which respond more appropriately to the functioning of the railway market today.

3. The proposal of recasting the first railway package encompasses mainly:
 - (a) the adequate financing of and charging for rail infrastructures;
 - (b) the conditions of access to and competition on the railway market; and
 - (c) the appropriate regulatory supervision of the market.

Discussion within the Council bodies

4. The Council Working Party on Land Transport (hereinafter referred to as the Working Group) started its examination of the above proposal during September 2010, under the Belgian Presidency. Given the size and complexity of the proposed recast, the Presidency decided to structure the examination into the following three themes:
Theme 1 - Financing and charging of the railway infrastructure;
Theme 2 - Improvement of market access;
Theme 3 - Monitoring and supervision of the rail market.
5. The Working Group started its examination of the provisions included in theme 1. Since the discussion still is in its preliminary phase, and considering the importance of the proposed provisions regarding financing and charging of the railway infrastructure together with the impact these provisions would have on Member States, the Presidency decided to submit a progress report to the TTE Council on 2 December 2010 with the intention to hold, at the Council meeting, based on the three questions appearing below, a policy debate which could serve as political guidance to the Council preparatory bodies for their future examination of this file.

Issues to be debated at the TTE Council

- **Publication of a rail infrastructure development strategy**
6. According to Article 8(1) of the Commission recast proposal, Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the European Union. For this purpose, Member States shall publish, at the latest two years after the entry into force of the proposed Directive, 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 five years and be renewable.
 7. Following the discussion at the Working Group, several delegations argued that, since it is the responsibility of the Member States to finance the rail infrastructure, the publication of a rail infrastructure development strategy could intervene on areas of Member State competence. Furthermore, some delegations argued that the required time period of at least five years would be too far-reaching and that the conditions for the renewal of the strategy should be defined. Delegations also expressed their doubt on the possible impact a strategy covering a period of five years would have on the "annual budgetary principle", applied by most of the Member States. In response, the Commission argued that the publication of a five years strategy would be important to communicate the vision for the rail system and would ensure the necessary transparency for the industry. According to the Commission, it does not constrain the annual budgetary decisions on infrastructure financing but rather set the multi-annual framework for the development of rail infrastructure as it is usually done by Member States for their transport system through multi-annual mobility plans.

- **Noise-differentiated infrastructure charges**

8. According to Article 31(5) of the Commission recast proposal, when charging for the cost of noise effects will be allowed by Union legislation for road freight transport, rail infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train in accordance with the requirements specified in the annex to the proposal.
9. During the discussion at the Working Group, several delegations indicated the need to ensure equal treatment of rail and road transport. A number of delegations suggested that the application of the noise-differentiated infrastructure charges for rail services shall be done on a voluntary basis, to be in line with the provisions of the Eurovignette Directive. Furthermore, some delegations argued that noise-differentiated infrastructure charges should only be introduced in areas where rail traffic noise is identified as a problem on the basis of noise mappings carried out in accordance with the Directive (2002/49/EC) on the assessment and management of environmental noise. In response, the Commission indicated that, based on an extensive impact assessment and experts' studies, it was possible to demonstrate that the noise-differentiated infrastructure charges are the most efficient and effective measures to reduce rail noise at the source and that it should be applied on a large scale in order to provide the necessary incentive for retrofitting of noisy wagons.

- **Temporary reduction of the infrastructure charges for trains equipped with ETCS**

10. According to Article 32(3) of the Commission recast proposal, trains equipped with the European Train Control System (ETCS) running on lines equipped with national command control and signalling systems shall enjoy a temporary reduction of the infrastructure charge in accordance with the criteria specified in the annex to the proposal.

11. During the discussion at the Working Group, a number of delegations expressed their disagreement with the method proposed for the temporary reduction of the infrastructure charges to trains equipped with ETCS. According to these delegations, this would create a burden on the state budget since Member States would be obliged to compensate for the loss of revenues such a reduction would cause. Some delegations would like to make the system for temporary reduction of the infrastructure charges voluntary. In response, the Commission clarified that its proposal would not prevent infrastructure managers to increase the infrastructure charge for trains not equipped with ETCS to compensate for the loss of income and thereby ensure that the system does not create an additional financial burden for the Member States.

Other outstanding issues

- **Adoption of a business plan**

12. In Article 8(3) of the Commission recast proposal it is stipulated that, within the framework of the general policy determined by the Member State and taking into account the rail infrastructure development strategy, the infrastructure manager shall adopt a business plan including investment and financial programmes. The infrastructure manager shall ensure that interested parties (applicants) are consulted before the business plan is approved.
13. During the discussion at the Working Group, 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**

14. Infrastructure managers shall, in accordance with Article 30 of the recast proposal, with due regard to safety and the quality of the infrastructure service, be given incentives to reduce the costs of providing infrastructure and the level of access charges. Member States shall ensure that these incentives are implemented through contractual agreements between the competent authority and the infrastructure manager. Accordingly, the possibility to use "appropriate regulatory measures" in this regard is proposed to be deleted.
15. Moreover, the contractual agreements shall cover a period of not less than five years and interested parties shall be consulted before their signature. The infrastructure managers shall ensure the consistency between the provisions of the contractual agreements and the business plan.
16. During the examination of this article, delegations raised the same concern over the consequences the five years period would have on the "annual budgetary principle", as described in paragraph 7 above. Furthermore, delegations expressed the same view concerning the obligation to consult interested parties, as in paragraph 13 above. 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**

17. According to Article 29(2) of the Commission recast proposal, in order to guarantee the optimal competitiveness of international train services, Member States shall ensure that infrastructure managers cooperate to enable the application of efficient charging schemes for the operation of train services which cross more than one infrastructure network. Member States shall ensure that representatives of infrastructure managers whose charging decisions have an impact on the use of railway infrastructure of other infrastructure managers associate to coordinate the charging or to charge for the use of relevant infrastructure at international level.

18. Furthermore, according to Article 37 of the above proposal, Member States shall ensure that infrastructure managers cooperate to enable mark-ups and performance schemes to be efficiently applied, for traffic crossing more than one network of the rail system within the European Union.
 19. Following the initial discussion by the Working Group, 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 referred to in Article 55**
20. Several delegations argued during the examination of the proposed provisions regarding financing and charging of the railway infrastructure (theme 1) 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" (Article 32(1)), as well as on the main parameters of the performance scheme for the improvement of the performance of the railway network (Article 35 and Annex VIII point (a)).

- **The use of delegated acts referred to in Article 60**

21. The Commission recast 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 in accordance with the procedure referred to in Article 60, i.e. 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.
22. A majority of delegations expressed a strong reservation on the use of delegated acts for the above purpose.

Conclusion

23. Following the above, Coreper is invited to take note of this progress report and to invite the ministers at the TTE Council, on 2 December 2010, to examine it and to reply to the following questions, suggested by the Presidency, during the policy debate:

Questions for the Ministers:

1. *In which way would the publication of national rail infrastructure development strategies stimulate sustainable investments in the railway sector?*
2. *How should differentiation of track access charges based on noise performances be applied to provide an effective incentive for retrofitting of noisy wagons at EU level and thereby to diminish noise emissions?*
3. *What should be the main characteristics of a temporary reduction of the track access charges for ETCS equipped vehicles to stimulate railway undertakings to install such systems?*