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THE EUROPEAN UNION**

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**REVISED ADDENDUM TO "I/A" ITEM NOTE**

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from: General Secretariat of the Council

to: COREPER / COUNCIL

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Subject: Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast) **(second reading)**

– Approval of the European Parliament's amendments **(LA + S)**

Statements

**COMMON GUIDELINES**

**Consultation deadline: 26.10.2012**

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**Commission statement**

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5(4), 2), point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5(4) 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.

While the Commission supports the agreement reached by the European Parliament and the Council on the recourse to this provision in nine specific cases which they have justified by reasons of their potential impact on the functioning of the rail market and public finances, it regrets that such justification is not reflected in a recital .

### **Statement by Germany**

The provision in Article 32(4) continues to make a binding differentiation between charges for railway lines in order to give incentives to trains equipped with the ETCS. Germany is opposed to Member States taking over any "liability" for financial deficits incurred by rail infrastructure managers as a result of this price differentiation between railway lines.

Germany assumes that the statement made by the European Commission in the Council meeting on 16 June 2011 in connection with the adoption of the general approach on the proposed Directive still stands, namely, that the budget reservations (recitals 10 and 37) specifically apply to Article 8(4).

Germany also assumes that the third subparagraph of Article 31(5) does not limit the introduction of a noise-differentiated railway line price component within the meaning of subparagraph 1 only in order to finance the equipping of freight wagons, but that this provision can provide a general incentive on noise reduction and does not exclude other measures.

Germany would point out that subparagraph 2 of Article 13(3) provides for the introduction of separate balance sheets and profit and loss accounts for "all service facilities referred to in (...) Annex II", and that the definition of service facilities in Annex II includes storage sidings, for instance. Germany assumes that the intention of subparagraph 2 of Article 13(3) is not to prescribe separate balance sheets and profit and loss accounts for every single service facility, but rather to separate service facilities into different categories.

## Joint statement by Poland and the Slovak Republic

Poland and the Slovak Republic attach high importance to the development of the rail sector. Poland and the Slovak Republic are in the process of conducting difficult and expensive restructuring process of the infrastructure manager. Poland and the Slovak Republic will also gradually increase the investments in the rail infrastructure within the financial capability.

*The Directive of the European Parliament and of the Council establishing a single European railway area* is an important document, constituting the basis for the development of rail transport. At the same time, it should take into account the difficult financial situation of the Member States and contain appropriate transitional periods.

Poland and the Slovak Republic make an assumption that obligations arising from the directive cannot be contradictory to the commitments resulting from the Stability and Growth Pact, in particular regarding the binding Excessive Deficit Procedure for some Member States. From this point of view, the transitional periods foreseen in the directive are not sufficient.

Moreover, Poland and the Slovak Republic believe that some of the directive's provisions should not apply to already existing lines used solely for freight operations, having untypical for the EU technical characteristics, and which connect only one Member State with a bordering 3rd country. However, adequate exclusion has not been included in the directive.

Taking the foregoing into account, Poland and the Slovak Republic cannot support the directive and abstain from voting.

## Statement by Latvia

Latvia fully supports the initiative to simplify, clarify and modernize the regulatory framework of the European railway area by recasting the first railway package.

Nevertheless, Latvia still maintains concerns regarding some provisions of the Directive:

- Article 7, point 1 sets an obligation for the Member States to show that the independence of essential functions of an infrastructure manager have been achieved. Lack of clearly defined criteria in the Directive and a general requirement for Member States to ensure that the essential functions are entrusted to bodies or firms that do not themselves provide any rail transport services gives possibility for a broad interpretation and will not decrease ambiguity and gaps of the current regulatory framework. Transposition of the current Directive and related infringement procedures prove that Member States have difficulties in this regard. Clearly defined criteria would have allowed a better transposition of the provisions of the Directive as well as ensured the railway sector that national measures are not excessive *vis-à-vis* regulatory framework of the European Union.

Latvia considers that the task given to the Commission in Article 63, point 1 to, 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 while respecting the right of initiative is a step in the right direction, but at the same time does not ensure the necessary certainty that the issue will be solved in a future.

- Latvia also maintains concerns with regard to the inclusion of the function of collection of infrastructure charges in the list of essential functions (Article 7, point 1). Latvia fully understands the necessity to protect the commercially sensitive information, however in case of Latvia this function would have to be transferred from the infrastructure manager, who at the same time is an owner of the infrastructure, to the performer of essential functions. Such an action would hinder the ability of the infrastructure manager to properly control its finances and would also have a negative impact on its existing or future financial obligations as well as financing of the infrastructure development.
  
- Latvia also believes that the solution to the issue raised by the European Parliament on Article 17, point 1 concerning licensing in respect of relations with third countries and on a network whose track gauge is different from the main rail network within the Union and which is either geographically detached or peripherally located from the Union is not sufficient, and still believes that clear rules for a possibility to apply limitations concerning railway undertakings which are directly or indirectly effectively controlled through the ownership shares of third country or nationals of third country should have been set in the main text of the Directive.

Notwithstanding the above mentioned concerns, Latvia understands the importance of advancing the creation of Single European Railway area and therefore expresses its support to the final compromise of the Directive, while calling on the European Commission to take the issues mentioned above into account when preparing future legislative acts in this area.

#### **Statement by Austria**

In principle, Austria supports the initiative to recast the first railway package with the aim of simplifying the regulatory environment in the European railway sector. The competitiveness of rail transport as an environmentally friendly alternative to the road is of crucial importance to Austria.

For this reason, like many other Member States, Austria also fully supports the European objectives concerning the ETCS. At a national level, this is demonstrated by the Austrian ETCS migration plan and to an even greater extent by the Austrian support programme for equipping trains with ETCS Level Two. This scheme, which was notified and launched in 2011 and which corresponds to the version pursuant to Commission Decision 2008/386/EC already provides a direct incentive for equipping trains with ETCS Level Two.

In this context it should be emphasised that Article 32(4) can only be interpreted as meaning that Member States or infrastructure managers in Member States who have already launched an ETCS support programme for equipping trains with ETCS do not have the same obligation to differentiate the rail use charge on ETCS corridors pursuant to 2009/561/EC as those Member States that do not provide any direct incentives to rail companies for equipping trains with ETCS.

In general, at European level only the framework principles should be laid down for the sector and it should be left to states to organise their rail sector within the framework of the European objectives. Any mandatory separation of bodies, beyond separate accounts and balance sheets, leads to disproportionate additional financial and organisational burdens and to disproportionate interference in railway undertakings' freedom of economic decision making, which Austria does not support.

For this reason, Austria also rejects the wordings of Articles 13(3) and (6) and cannot accept the legislative act as it stands.