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Amendment 162

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Report

A7-0367/2011

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Single European railway area (recast)
COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)

Proposal for a directive
Article 13

Text proposed by the Commission

Amendment

Article 13

Article 13

Conditions of access to services

Conditions of access to services

1. **Railway** undertakings **shall**, on a non-discriminatory basis, ***be entitled to*** the minimum access package laid down in Annex III, point 1.
2. **The services** referred to in Annex III, point 2, ***shall be supplied by all operators of service*** facilities in a non-discriminatory manner.

1. ***Infrastructure managers shall supply to all railway*** undertakings, on a non-discriminatory basis, the minimum access package laid down in Annex III, point 1.
2. ***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 under the supervision of the regulatory body as provided under Article 56.***

Where the operator of ***the*** service facility belongs to a body or firm which is also active and holds a dominant position in at least one of the railway transport services markets for which the facility is used, the operator shall be organised in such a way that it is independent, in ***legal***, organisational and decision-making terms, of this body or firm.

Where the operator of ***a*** service facility ***referred to in Annex III, point 2*** belongs to a body or firm which is also active and holds a dominant position in at least one of the railway transport services markets for which the facility is used, the operator shall be organised in such a way that it is independent, in organisational and decision-making terms, of this body or firm. ***The operator of a service facility and this body or firm shall have separate accounts, including separate balance sheets and profit and loss accounts.***

Requests by railway undertakings for

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access to the service facility may only be rejected if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same route under economically acceptable conditions. ***The burden of proving for the existence of a viable alternative lies with the operator of the service facility.***

When the operator of the service facility encounters conflicts between different requests, ***he*** shall ***attempt*** the best possible matching of all requirements. If no viable alternative is available, and it is not possible to accommodate all requests for capacity for the relevant facility on the basis of demonstrated needs, the regulatory body referred to in Article 55 shall on its own initiative or on the basis of a complaint take appropriate action to ensure that an appropriate part of the capacity is devoted to railway undertakings other than the ones which are part of the body or firm to which the facility operator ***also*** belongs. ***However newly built maintenance and other technical facilities developed for specific new rolling stock may be reserved to the use of one railway undertaking for a period of five years from the start of their operation.***

Where the service facility has not been in use for at least ***two consecutive years*** its owner shall publicise the operation of the facility as being for lease or rent.

access to the service facility ***shall be answered within 4 weeks and*** may only be rejected ***if the service facility has insufficient spare capacity to satisfy these requests or*** if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same route under economically acceptable conditions. ***When refusing access to its service facility, the operator of the service facility shall propose an economically and technically viable alternative, if any, and justify its refusal in writing. The refusal shall not oblige the operator of the facility to make investments in resources or facilities in order to accommodate all requests from railway undertakings.***

When the operator of the service facility encounters conflicts between different requests, ***it*** shall ***use all its spare capacity to propose*** the best possible matching of all new requirements. If no viable alternative is available, and it is not possible to accommodate all ***new*** requests for capacity for the relevant facility on the basis of demonstrated needs, the regulatory body referred to in Article 55 shall on its own initiative or on the basis of a complaint ***by an applicant*** take appropriate action, ***bearing in mind the needs of all stakeholders concerned***, to ensure that an appropriate part of the ***spare*** capacity is devoted to railway undertakings other than the ones which are part of the body or firm to which the facility operator belongs, ***without prejudice to its potential public service obligations.***

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***

3. Where the **infrastructure manager** 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.

4. Railway undertakings may request a further range of ancillary services, listed in Annex III, point 4 from the infrastructure manager or from other **suppliers**. The infrastructure manager is not obliged to supply these services.

5. Annex III may be amended in the light of experience in accordance with the procedure referred to in Article 60.

operator of such facility demonstrates that an ongoing process of reversion prevents its use by a railway undertaking.

3. 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.

4. Railway undertakings may request a further range of ancillary services, listed in Annex III, point 4 from the infrastructure manager or from other **operators of service facility**. The infrastructure manager is not obliged to supply these services.

¹ ***OJ L 84, 26.3.2008, p. 132***

Or. en

Justification

It is essential to safeguard the access to maintenance facilities, in order not to run the risk of seriously disrupting the quality of existing rail transport services and/or to jeopardise the ability of incumbent operators to fulfil their public service obligations.

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