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**A7-0367/2011**

19.10.2011

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## **REPORT**

on the proposal for a directive of the European Parliament and of the Council  
establishing a single European railway area (recast)  
(COM(2010)0475 – C7-0268/2010 – 2010/0253(COD))

Committee on Transport and Tourism

Rapporteur: Debora Serracchiani

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a directive of the European Parliament and of the Council  
establishing a single European railway area (recast)  
(COM(2010)0475 – C7-0268/2010 – 2010/0253(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0475),
- having regard to Article 294(2) and Article 91 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0268/2010),
- having regard to Article 14 of the Treaty on the Functioning of the European Union and Protocol No 26 thereto on Services of General Interest,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to its resolution of 17 June 2010 on the implementation of the first railway package Directives<sup>1</sup>,
- having regard to the reasoned opinion submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Chambre des Députés of Luxembourg, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 16 March 2011<sup>2</sup>,
- having regard to the opinion of the Committee of the Regions of 28 January 2011<sup>3</sup>,
- having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>4</sup>,
- having regard to the letter of 26 May 2011 from the Committee on Legal Affairs to the Committee on Transport and Tourism in accordance with Rule 87(3) of its Rules of Procedure,
- having regard to Rules 87 and 55 of its Rules of Procedure,

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<sup>1</sup> Texts adopted, P7\_TA(2010)0240.

<sup>2</sup> OJ C ...

<sup>3</sup> OJ C 104, 2.4.2100, p. 53.

<sup>4</sup> OJ C 77, 28.3.2002, p. 1.

- having regard to the report of the Committee on Transport and Tourism (A7-0367/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
- 1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
- 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
- 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## **Amendment 1**

### **Proposal for a directive Recital 2 a new**

*Text proposed by the Commission*

*Amendment*

***(2a) The railway sector's share in transport has not been increasing over the last decade, contrary to the objectives of the 2001 railway package, demonstrating the need to further improve current legislation in order to support the sector. It follows that the present reorganisation is essential;***

*Justification*

*The development of rail transport since the adoption of the first railway package has not fulfilled the expectations of a recovery of the sector. For example between 1996 and 2008 rail freight's modal share has been decreasing by 2% to 10, 6% while road freight increased from 42, 1 to 45, 9%. The EU is required to urgently improve its legislation in order to support the railways, avoid further road congestion and improve its environmental situation.*

## **Amendment 2**

**Proposal for a directive**  
**Recital 2 b(new)**

*Text proposed by the Commission*

*Amendment*

***(2b) The numerous infringement procedures against Member States demonstrate that the current legislation gives rise to differences of interpretation and that the first railway package needs to be clarified and improved in order to ensure a genuine opening up of the European rail market;***

**Amendment 3**

**Proposal for a directive**  
**Recital 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***(2c) Investment in the development and upkeep of railway infrastructure remains insufficient to guarantee the sector's development and capacity to compete;***

*Justification*

*Underinvestment is a crucial problem which the reform will have to tackle.*

**Amendment 4**

**Proposal for a directive**  
**Recital 2 d new**

*Text proposed by the Commission*

*Amendment*

***(2d) The Directives which comprise the First Railway Package have not prevented a considerable variation in the structure and level of railway infrastructure charges and the form and duration of capacity allocation processes;***

### *Justification*

*Infrastructure charges and the way they are calculated still vary greatly throughout the EU. This complicates international rail transport. The same is true for the allocation of train paths. The current legislation needs to be improved further.*

### **Amendment 5**

#### **Proposal for a directive Recital 2 e (new)**

*Text proposed by the Commission*

*Amendment*

***(2e) Non-transparent market conditions are an obvious obstacle to competitive railway services;***

### *Justification*

*Lack of transparency is an obstacle to the entry on to the market of new undertakings which could create a more competitive rail sector.*

### **Amendment 6**

#### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The coexistence in the Member States of different social security schemes in the railway sector poses a risk of unfair competition between new railway operators and incumbent undertakings, and requires harmonisation while respecting the specific characteristics of the sector and of the Member States;***

### **Amendment 7**

#### **Proposal for a directive Recital 3 b (new)**



*Text proposed by the Commission*

*Amendment*

***(3b) Guarantees must be provided that the regulatory bodies will carry out their supervisory duties, in order to ensure non-discrimination between railway undertakings, the implementation of suitable charging policies and compliance with the principle of the separation of accounts;***

*Justification*

*Failure to provide such guarantees is one of the obstacles to a competitive rail sector.*

## **Amendment 8**

### **Proposal for a directive Recital 3 c (new)**

*Text proposed by the Commission*

*Amendment*

***(3c) In order to complete the European railway area, complete interoperability of the rail system at European level is necessary. The European Railway Agency should be assigned the appropriate powers and resources to attain this objective more quickly, inter alia as regards the development of common standards for certification of rolling stock and safety and signalling systems;***

## **Amendment 9**

### **Proposal for a directive Recital 4**

*Text proposed by the Commission*

*Amendment*

(4) Regional, urban and suburban services as well as transport activities in the form of shuttle services through the Channel Tunnel should be excluded from the scope of this Directive.

(4) Regional, urban and suburban services as well as transport activities in the form of shuttle services through the Channel Tunnel should be excluded from the scope of this Directive. ***Heritage and museum***

*railways running on their own track  
should also be exempt from the scope of  
the Directive;*

## **Amendment 10**

### **Proposal for a directive Recital 6**

#### *Text proposed by the Commission*

(6) 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. Given this situation, it is necessary for these two activities to be managed separately and to have separate accounts.

#### *Amendment*

(6) 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. Given this situation, it is necessary for these two activities to be managed separately and to have separate accounts, ***guaranteeing the transparency which ensures that no public funds are diverted to other commercial activities;***

#### *Justification*

*This is the only way to ensure the transparency needed for a more competitive and accessible market.*

## **Amendment 11**

### **Proposal for a directive Recital 6 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***(6a) 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;***

### *Justification*

*More transparency is needed on the flows of public money between infrastructure manager and railway undertaking.*

### **Amendment 12**

#### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***(6b) 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;***

### *Justification*

*Competition in the rail market must not be at the expense of working conditions and workers' social protection. All operators, whatever their model of undertaking, must comply with national legislation on social protection and health.*

### **Amendment 13**

#### **Proposal for a directive Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

***(6c) In order to make rail transport competitive with road transport, the differing sets of national rules, such as those on rail transport safety, the standardisation and use of accompanying documents, the marshalling of trains and the relevant documentation related thereto, the standardisation of signals and marks used to guide trains, the standardisation of measures and checks implemented in connection with shipments of hazardous goods and uniform procedures for registering and monitoring shipments of waste, should be standardised;***

## **Amendment 14**

### **Proposal for a directive**

#### **Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) The Union should explore alternative sources of funding European rail projects through innovative financial instruments, such as Union project bonds, to encourage private investment and to improve access to venture capital. By the same token, the railway market must be made attractive to alternative, private investors via clear, transparent legal frameworks;***

*Justification*

*Lack of funding is one of the main reasons for the difficult situation of the European railways. Alternative strategies and sources of funding need to be developed. In particular funding of infrastructure has to be increased. Member States allocating funding to their infrastructure must also be given the guarantee that this money is not used for other means than pure infrastructure purposes.*

## **Amendment 15**

### **Proposal for a directive**

#### **Recital 10 b (new)**

*Text proposed by the Commission*

*Amendment*

***(10b) Member States and infrastructure managers should be able to fund infrastructure investment through means other than direct State funding such as private sector financing;***

*Justification*

*It is appropriate to refer the possibility for infrastructure managers to be established or operate through alternative funding models from which they can derive private financing. This is vital to safeguard existing funding mechanisms in member states.*

## Amendment 16

### Proposal for a directive Recital 11

#### *Text proposed by the Commission*

(11) An efficient freight sector, especially across borders, requires action to open up the **market**.

#### *Amendment*

(11) An efficient **passenger and** freight sector, especially across borders **and in particular in instances where different track gauges still constitute a physical barrier to competition**, requires **urgent** action to open up the **markets in the individual Member States and generate competitiveness**;

#### *Justification*

*Different track gauges between France and Spain for example is a concrete and physical barrier to competition which adds to the already heavy regulatory barriers existing in the rail sector. Rail transport is one of the few sectors in which the single market has not yet been completed. The process of opening up the market should therefore extend to liberalisation of domestic rail services. Efficiency requires a competitive market.*

## Amendment 17

### Proposal for a directive Recital 14

#### *Text proposed by the Commission*

(14) The introduction of new, open-access, international passenger services with intermediate stops should **not be used to open up the market for domestic passenger services, but should merely be focused** on stops that are ancillary to the international route. The principal purpose of **the new** services should be to carry passengers travelling on an international journey. When assessing whether that is the service's principal purpose, criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service should be taken into account. The assessment of the service's principal

#### *Amendment*

(14) The introduction of new, open-access, international passenger services with intermediate stops should **focus** on stops that are ancillary to the international route. The principal purpose of **such** services should be to carry passengers travelling on an international journey. When assessing whether that is the service's principal purpose, criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service should be taken into account. The assessment of the service's principal purpose should be carried out by the respective national regulatory body at the

purpose should be carried out by the  
respective national regulatory body at the  
request of an interested party;

request of an interested party;

### *Justification*

*This amendment should make the text more open and bring it up to date.*

## **Amendment 18**

### **Proposal for a directive**

#### **Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) Regulation (EC) No 1370/2007  
allows Member States to ensure that  
workers' social rights are maintained in  
the context of the separation of the  
provision of transport services from the  
management of the infrastructure, which  
could involve a transfer of an  
undertaking;***

## **Amendment 19**

### **Proposal for a directive**

#### **Recital 16**

*Text proposed by the Commission*

*Amendment*

(16) Opening up international passenger services to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the option of limiting the right of access to the market where this right would compromise the economic equilibrium of these public service contracts and where approval is given by the relevant regulatory body referred to in Article 55 of this Directive on the basis of an objective economic analysis, following a request from the competent authorities that awarded the

(16) Opening up international passenger services to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the option of limiting the right of access to the market where this right would compromise the economic equilibrium of these public service contracts and where approval is given by the relevant regulatory body referred to in Article 55 ***and, where applicable, the network of regulatory bodies as defined in Article 57*** of this Directive on the basis of an objective

public service contract.

economic analysis, following a request from the competent authorities that awarded the public service contract;

### *Justification*

*This amendment seeks to extend the scope of the provision to national passenger transport services. It also seeks to allow the network of regulatory bodies to take action where necessary.*

## **Amendment 20**

### **Proposal for a directive Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

*(18a) Market developments have shown that a crucial concern is to strengthen the role of the regulatory bodies. If they are to play a key role in ensuring a fair environment with equitable access conditions, they need to receive the financial means as well as appropriate staffing and logistic equipment to fulfil this role;*

## **Amendment 21**

### **Draft legislative resolution Recital 18 b (new)**

*Draft legislative resolution*

*Amendment*

*(18b) whereas the national regulatory body must be an independent regulatory authority with the power to take up matters on its own initiative and to undertake investigations, and capable of issuing opinions and enforceable decisions with a view to ensuring an open market without barriers in which competition is exercised freely and without distortion;*

## Amendment 22

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

(19) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration. The competence of the regulatory body should be extended to allow the assessment of the purpose of an international service and, where appropriate, the potential economic impact on existing public service contracts.

#### *Amendment*

(19) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration, ***without prejudice to the option of this body being funded from the national budget or from levies on the rail sector and of the publication of the relevant information.*** The competence of the regulatory body should be extended to allow the assessment of the purpose of an international service and, where appropriate, the potential economic impact on existing public service contracts;

#### *Justification*

*The directive creates an independent regulatory body, but makes no mention of its financing. Transparency requires the insertion of a specific reference to possible sources of financing, which could be public funds or levies on the sector. This information should be made public.*

## Amendment 23

### Proposal for a directive Recital 19 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(19a) The national regulatory 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. The national regulatory body has to have the necessary administrative capacity in terms of staff and resources to ensure an open and transparent railway market. The required level of staff should be directly linked to the market needs and vary accordingly. It***



*should be 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. It should be 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;*

*Justification*

*This recital is in line with the amendments proposed to Articles 55-57 which aim to strengthen the role and powers of the regulatory body. This proposal to set up a regulatory department within the European Commission (DG MOVE, DG COMP, ideally a combination of both) so as to advise, guide and coach the national regulatory bodies in their task and with obtaining the necessary resources (human, financial, intellectual).*

**Amendment 24**

**Proposal for a directive  
Recital 21**

*Text proposed by the Commission*

(21) The national regulatory bodies should exchange information **and**, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.

*Amendment*

(21) The national regulatory bodies should, **under the auspices of the Commission, create a network to strengthen their cooperation through the development of common principles and the exchange of best practices and** information. **They should also**, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop **at European level common** guidelines based on their experience;

*Justification*

*This recital is in line with the amendments proposed to Articles 55-57 which aim to strengthen the role and independence of the regulatory body and the cooperation between national regulatory bodies.*

**Amendment 25**

**Proposal for a directive**  
**Recital 21**

*Text proposed by the Commission*

(21) The national regulatory bodies should exchange information and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.

*Amendment*

(21) The national regulatory bodies should exchange information **and best practices** and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience. ***Based on the experience of that network of regulatory bodies the Commission should come forward with a legislative proposal for the setting up of a European regulatory body;***

**Amendment 26**

**Proposal for a directive**  
**Recital 22**

*Text proposed by the Commission*

(22) In order to ensure fair competition between railway undertakings, ***a distinction should be made between*** the provision of transport services and the operation of service facilities. ***Given this situation, it is necessary for these two types of activity to be managed independently in distinct legal entities. Such independence need not imply the establishment of separate*** body or firm for each service facility.

*Amendment*

(22) In order to ensure fair competition between railway undertakings, the provision of transport services and the operation of service facilities ***should be managed in a transparent and non-discriminatory manner. The regulatory body should ensure that this management is transparent and non-discriminatory in accordance with the procedures laid down in this Directive;***

*Justification*

*The complete separation of transport services will not necessarily lead to fair competition between the various activities involved. But the separation will involve additional organisational burdens, increased bureaucracy and higher administrative costs. This will have a negative impact on the competitiveness of rail compared to other modes of transport.*

**Amendment 27**

**Proposal for a directive**  
**Recital 23**

*Text proposed by the Commission*

(23) 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.

*Amendment*

(23) 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, ***social standards*** and professional competence;

**Amendment 28**

**Proposal for a directive**  
**Recital 24**

*Text proposed by the Commission*

(24) For the protection of customers and third parties concerned it is ***important*** to ensure that railway undertakings are sufficiently insured against liability.

*Amendment*

(24) For the protection of customers and third parties concerned it is ***essential*** to ensure that railway undertakings are sufficiently insured against liability.  
***Coverage of its liability in the event of accidents through guarantees provided by banks or other undertakings should also be allowed, provided that such coverage is offered under market conditions, does not result in State aid and does not contain elements of discrimination against other railway undertakings;***

*Justification*

*Railway undertakings shall have freedom to apply various proportionate options for civil liability, as there are different levels of risks in different railway networks. In many Member States options like adequacy of own capital or bank guarantees are successfully used for civil liability coverage.*

**Amendment 29**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(25) *A* railway **undertaking** should also be required to comply with national and Union rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that **it** can carry on **its activity** in complete safety and with **due** regard to **health**, social conditions and the rights of workers and consumers on specific stretches of track.

*Amendment*

(25) **All** railway **undertakings** should also be required to comply with **both** national and Union rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that **they** can carry on **their activities** in complete safety and with **full** regard to **existing obligations in relation to** social conditions, **health** and the rights of workers and consumers on specific stretches of track;

*Justification*

*Railway undertakings must comply to the full with the existing provisions on health, workers' rights and social conditions.*

**Amendment 30**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(25) A railway undertaking should also be required to comply with national and Union rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that it can carry on its activity in complete safety and with due regard to health, social conditions and the rights of workers and consumers on **specific** stretches of track.

*Amendment*

(25) A railway undertaking should also be required to comply with national and Union rules on the provision of railway services, applied in a non-discriminatory manner, which are intended to ensure that it can carry on its activity in complete safety and with due regard to health, social conditions and the rights of workers and consumers on **all** stretches of track;

*Justification*

*It should be obvious that the conditions referred to need to be met in all cases.*

**Amendment 31**

**Proposal for a directive**  
**Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) It is still the case that, too often, the granting of licences for railway undertakings' rolling stock is unjustifiably impeded, which distorts market access. A strong remit for the European Railway Agency in this respect is therefore appropriate. The Commission is therefore called upon, as part of the review of Regulation (EC) No 881/2004, to investigate whether the European Railway Agency's remit can be expanded in this regard;***

*Justification*

*It is not always easy for railway undertakings to gain access to the railway market of a Member State. As part of the planned review of the Regulation governing the European Railway Agency, the Agency should be assigned greater powers to monitor more strictly the conduct of Member States which indirectly block access to the market by means of their licensing policies and to take action against such conduct. A call for the Commission to investigate this possibility is also included.*

## **Amendment 32**

### **Proposal for a directive Recital 27**

*Text proposed by the Commission*

*Amendment*

(27) To ensure transparency and non-discriminatory access to rail infrastructure and rail-related services for all railway undertakings, all the information required to use access rights is to be published in a network statement.

(27) To ensure transparency and non-discriminatory access to rail infrastructure and rail-related services for all railway undertakings, all the information required to use access rights is to be published in a network statement, ***including formats which are accessible for people with disabilities or reduced mobility;***

*Justification*

*It is important, in the interests of consistency with the decisions adopted under other initiatives, to ensure multi-format accessibility and thus prevent any discrimination against people with disabilities.*

## Amendment 33

### Proposal for a directive Recital 35

*Text proposed by the Commission*

(35) Any charging scheme will send economic signals to users. It is important that those signals to railway undertakings should be consistent and lead them to make rational decisions.

*Amendment*

(35) Any charging scheme will send economic signals to users. It is important that those signals to railway undertakings should be consistent and **clear and** lead them to make rational **and sustainable** decisions;

## Amendment 34

### Proposal for a directive Recital 40 a (new)

*Text proposed by the Commission*

*Amendment*

***(40 a) Applicants offering single-wagon-load services need to be promoted in order to enlarge the potential market for new rail clients. It is therefore important that these applicants are being taken into account by the infrastructure manager when giving capacity to allow them to fully benefit from this legal framework and enlarge the rail market share for new sectors;***

## Amendment 35

### Proposal for a directive Recital 50

*Text proposed by the Commission*

(50) It is important to ensure better coordination of allocation schemes in order to improve the attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic.

*Amendment*

(50) It is important to ensure better coordination of allocation schemes in order to improve the attractiveness of rail for traffic which uses the network of more than one infrastructure manager, in particular for international traffic. ***In that context, it would appear desirable***

*ultimately to create a European regulatory body;*

*Justification*

*This amendment emphasises the interest in creating, eventually, a European regulatory body.*

**Amendment 36**

**Proposal for a directive  
Recital 53**

*Text proposed by the Commission*

(53) **Investment** in railway infrastructure is necessary and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments economically attractive.

*Amendment*

(53) **Increased investment** in railway infrastructure - **in particular existing infrastructure** - is necessary and infrastructure charging schemes should provide incentives for infrastructure managers to make appropriate investments economically attractive **and environmentally sustainable**;

**Amendment 37**

**Proposal for a directive  
Recital 58 a (new)**

*Text proposed by the Commission*

*Amendment*

**(58a) With the aim of increasing the proportion of goods and passenger traffic carried by rail in relation to other modes of transport, it is desirable that, when internalising external costs, Member States should ensure that the differentiated levies do not have any adverse impact on the financial equilibrium of the infrastructure manager. If the infrastructure manager were nonetheless to suffer a loss due to this differentiation, it is advisable that Member States should adjust this difference, with due regard to the rules on State aid;**

## **Amendment 38**

### **Proposal for a directive Recital 59**

*Text proposed by the Commission*

*Amendment*

**(59) The development of railway transport should be achieved by using inter alia the Union instruments available, without prejudice to priorities already established.** *deleted*

*Justification*

*In the spirit of better law-making and its readability for the European citizen, a considerable part of the recitals can be deleted.*

## **Amendment 39**

### **Proposal for a directive Recital 61**

*Text proposed by the Commission*

*Amendment*

**(61) It is desirable for railway undertakings and the infrastructure manager to be provided with incentives to minimise disruption of the network;** *deleted*

*Justification*

*In the spirit of better law-making and its readability for the European citizen, a considerable part of the recitals can be deleted.*

## **Amendment 40**

### **Proposal for a directive Recital 62**

*Text proposed by the Commission*

*Amendment*

**(62) The allocation of capacity is associated with a cost to the infrastructure manager, payment for which should be required;** *deleted*



## *Justification*

*In the spirit of better law-making and its readability for the European citizen, a considerable part of the recitals can be deleted.*

### **Amendment 41**

#### **Proposal for a directive Recital 63**

##### *Text proposed by the Commission*

(63) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of **a** regulatory **body** that **oversees** the application of the rules set out in this Directive and **acts** as an appeal body, notwithstanding the possibility of judicial review.

##### *Amendment*

(63) The efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of **national** regulatory **bodies** that **oversee** the application of the rules set out in this Directive and **act** as an appeal body, notwithstanding the possibility of judicial review;

## *Justification*

*This amendment clarifies the text*

### **Amendment 42**

#### **Proposal for a directive Recital 65**

##### *Text proposed by the Commission*

(65) *The Commission should be empowered to adapt the Annexes to this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted as delegated acts in accordance with Article 290 of the Treaty.*

##### *Amendment*

(65) *In order to ensure the provision of certain information for monitoring the rail market, to define certain details of the network statement, to define the direct costs of a train service, to define certain criteria for noise-differentiated infrastructure charges, to define certain criteria for a temporary reduction for ETCS, to define certain criteria of a performance scheme, to set out the details of the criteria to be followed regarding the setting up of requirements with regard to applicants, to define the schedule for the process of allocating capacity, to define the details of the regulatory accounts to be*

*provided to the regulatory body and to develop regulatory bodies' common criteria and practices for decision-making pursuant to this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the criteria and procedure to be followed as the scope of market monitoring, certain elements of the network statement, certain principles of charging, the temporary reduction for ETCS, certain elements of the performance scheme, the criteria to be followed for the requirements with regard to applicants for infrastructure, the schedule for the allocation process, the regulatory accounts and common principles and practices for making decision developed by regulatory bodies. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council;*

#### *Justification*

*This amendments aims 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. The text is in accordance with the 2011 interinstitutional common understanding.*

#### **Amendment 43**

##### **Proposal for a directive Recital 66**

*Text proposed by the Commission*

*(66) The measures necessary for the implementation of this Directive should be adopted in accordance with Council*

*Amendment*

*(66) In order to ensure uniform conditions for the implementation of Articles 10(2), 11(4), 14(2) and 17(5) of*

*Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.*

*this Directive implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers;*

*Justification*

*This amendment introduces a reference to the new Regulation on the implementing acts which entered recently into force.*

**Amendment 44**

**Proposal for a directive  
Recital 71 a (new)**

*Text proposed by the Commission*

*Amendment*

*(71a) In regard to the resolutions of the European Parliament of 12 July 2007 and of 11 June 2010 and in regard to the implementation of Directive 2001/12, the Commission should present a legislative proposal on the separation of the infrastructure manager and the operator by the end of 2012. As the railway sector is not fully opened until now, the Commission should present a legislative proposal on the market opening by that date;*

**Amendment 45**

**Proposal for a directive  
Article 2 – paragraph 3 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States may decide time periods and deadlines for the schedule for*

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<sup>1</sup> OJ L 184, 17.7.1999, p. 23.

*capacity allocation different from those referred to in Article 43(2), Annex VIII point 4(b) and Annex IX points 3, 4 and 5, for international train paths to be established in cooperation with infrastructure managers from third countries on a network whose track gauge is different from the main rail network within the Union.*

#### *Justification*

*This amendment allows for greater flexibility in the allocation of capacity in cases where international train paths are concerned which are established in cooperation with third countries on networks that have a track gauge that differs from the main rail network's gauge within in the EU. It essentially concerns the Baltic States.*

#### **Amendment 46**

##### **Proposal for a directive Article 2 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Member States may exclude from the application of Article 31(5) 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.***

#### **Amendment 47**

##### **Proposal for a directive Article 3 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

(2) "infrastructure manager" means any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the infrastructure manager on ***a network or***

(2) "infrastructure manager" means any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; ***in compliance with applicable safety rules***; the ***essential*** functions of the

*part of a network may be allocated to different bodies or firms;*

*infrastructure manager 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;*

#### **Amendment 48**

##### **Proposal for a directive**

##### **Article 3 – paragraph 1 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*(2a) ‘regulatory body’ means a body which, in a Member State, supervises the correct application of the relevant regulations, is not in any way involved in policy making, and is completely separate from firms, particularly the firms referred to in points 1 and 2;*

#### **Amendment 49**

##### **Proposal for a directive**

##### **Article 3 – paragraph 1 - point 3**

*Text proposed by the Commission*

*Amendment*

*(3) ‘railway infrastructure’ means all the items listed in **Annex I.A to Commission Regulation (EEC) No 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Regulation (EEC) No 1108/70 of 4 June 1970 which for reasons of clarity are included in Annex I to this Directive;***

*(3) ‘railway infrastructure’ means all the items listed in Annex I to this Directive;*

#### *Justification*

*By deleting the link to regulation 2598/70 Annex I becomes the list which defines the term "railway infrastructure" for this Directive.*

## Amendment 50

### Proposal for a directive

#### Article 3 – paragraph 1 – point 7

*Text proposed by the Commission*

(7) ‘regional services’ means transport services operated to meet the transport needs of **a** region;

*Amendment*

(7) ‘regional services’ means transport services operated to meet the transport needs of **one** region **or of border regions**;

*Justification*

*The notion of ‘region’ must be interpreted in its geographic sense.*

## Amendment 51

### Proposal for a directive

#### Article 4 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The infrastructure manager shall manage its own IT services, to ensure that commercially sensitive information is adequately protected.**

*Justification*

*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.*

## Amendment 52

### Proposal for a directive

#### Article 4 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

**2b. Member States shall also ensure that both railway undertakings and infrastructure managers which are not completely independent of one another are responsible for their own staff**

*policies.*

### *Justification*

*As infrastructure managers must be able to take independent decisions, they must also be fully responsible for their own personnel policies. Unless their personnel policy is completely independent, there is a danger that this condition may not be met.*

## **Amendment 53**

### **Proposal for a directive**

#### **Article 6**

##### *Text proposed by the Commission*

#### **Article 6**

##### **Separation of accounts**

1. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity shall not be transferred to the other.

2. 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.

3. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of rail freight transport services and, on the other, for activities relating to the provision of passenger transport services. Public funds paid for activities relating to the provision of transport services as public-

##### *Amendment*

#### **Article 6**

##### ***Transparent* separation of accounts**

1. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of transport services by railway undertakings and, on the other, for business relating to the management of railway infrastructure. Public funds paid to one of these two areas of activity shall not be transferred to the other.

2. 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.***

3. Member States shall ensure that separate profit and loss accounts and balance sheets are kept and published, on the one hand, for business relating to the provision of rail freight transport services and, on the other, for activities relating to the provision of passenger transport services. Public funds paid for activities relating to the provision of transport services as public-

service remits must be shown separately for each public service contract in the relevant accounts and shall not be transferred to activities relating to the provision of other transport services or any other business.

4. The accounts for the different areas of activity referred to in paragraphs 1 and 3 shall be kept in a way that allows monitoring of *the prohibition on transferring public funds paid to one area of activity to another.*

service remits must be shown separately for each public service contract in the relevant accounts and shall not be transferred to activities relating to the provision of other transport services or any other business.

4. *In order to ensure full transparency of infrastructure costs*, the accounts for the different areas of activity referred to in paragraphs 1 and 3 shall be kept in a way that allows monitoring of *compliance with the previous paragraphs and monitoring of the use of income from infrastructure charges, surpluses from other commercial activities of and public and private funding paid to the infrastructure manager. The revenues of the infrastructure manager shall in no way be used by a railway undertaking or a body or firm controlling a railway undertaking as this may strengthen its market position or enable it to gain economic advantages over other railway undertakings. This provision shall not prevent, under the supervision of the regulatory body as referred to in Article 55, reimbursement, including interest payment under market conditions, of the capital employed made available by the body or firm controlling the railway undertaking to the infrastructure manager.*

## Amendment 54

### Proposal for a directive Article 7

*Text proposed by the Commission*

#### Article 7

Independence of essential functions of an infrastructure manager

1. Member States shall ensure that the functions determining equitable and non-discriminatory access to infrastructure,

*Amendment*

#### Article 7

Independence of essential functions of an infrastructure manager

1. Member States shall ensure that the functions determining equitable and non-discriminatory access to infrastructure *as*



*listed in Annex II*, are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structure, this objective must be shown to have been achieved.

***Annex II may be amended in the light of experience, in accordance with the procedure referred to in Article 60.***

Member States may, however, assign to railway undertakings or any other body the responsibility for contributing to the development of the railway infrastructure, for example through investment, maintenance and funding.

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions described in Sections 3 and 4 of Chapter IV shall be performed respectively by a charging body and by an allocation body that are independent in their legal form, organisation and decision-making from any railway undertaking.

3. When the provisions of Chapter IV, Sections 2 and 3 refer to essential functions of an infrastructure manager, they shall be understood as applying to the charging body or the allocation body for their respective competencies.

*defined by Art 3(2)* are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structure, this objective must be shown to have been achieved.

Member States may, however, assign to railway undertakings or any other body the responsibility for contributing to the development of the railway infrastructure, for example through investment, maintenance and funding.

2. Where the infrastructure manager, in its legal form, organisation or decision-making functions, is not independent of any railway undertaking, the functions described in Sections 2 and 3 of Chapter IV shall be performed respectively by a charging body and by an allocation body that are independent in their legal form, organisation and decision-making from any railway undertaking.

3. When the provisions of Chapter IV, Sections 2 and 3 refer to essential functions of an infrastructure manager, they shall be understood as applying to the charging body or the allocation body for their respective competencies.

***3a. 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.***

## **Amendment 55**

## Proposal for a directive

### Article 8

#### *Text proposed by the Commission*

#### Article 8

##### Sound financing of the infrastructure manager

1. 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 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.
2. Having due regard to Articles 93, 107 and 108 of the Treaty, Member States *may* 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.
3. Within the framework of general policy determined by the State and taking into account the rail infrastructure development strategy referred to in paragraph 1, the infrastructure manager shall adopt a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use, provision and development of the

#### *Amendment*

#### Article 8

##### Sound financing of the infrastructure manager

1. 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.
2. ***Whenever revenues are not sufficient to cover the financing needs of the infrastructure manager, without prejudice to the charging framework of Articles 31 and 32 of this Directive, and*** having due regard to Articles 93, 107 and 108 of the Treaty, 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.
3. Within the framework of general policy determined by the State and taking into account the rail infrastructure development strategy referred to in paragraph 1, the infrastructure manager shall adopt a business plan including investment and financial programmes. The plan shall be designed to ensure optimal and efficient use, provision and development of the

infrastructure while ensuring financial balance and providing means for these objectives to be achieved. The infrastructure manager shall ensure that applicants are consulted before the **business** plan is approved. The regulatory body referred to in Article 55 shall issue a non-binding opinion on whether the business plan **is appropriate to achieve these objectives**.

4. Member States shall ensure that, under normal business conditions **and over a period of no more than three years**, the accounts of **an** infrastructure manager shall at least balance income from infrastructure charges, surpluses from other commercial activities and State funding on the one hand, and infrastructure expenditure on the other, including **advance payments from the State**, where appropriate.

Without prejudice to the possible long-term aim of user cover of infrastructure costs for all modes of transport on the basis of fair, non-discriminatory competition between the various modes, where rail transport is able to compete with other modes of transport, within the charging framework of Articles 31 and 32, a Member State may require the infrastructure manager to balance his accounts without State funding.

## Amendment 56

### Proposal for a directive Article 9 – paragraph 3

*Text proposed by the Commission*

(3) Paragraphs 1 and 2 shall not apply to

infrastructure while ensuring financial balance and providing means for these objectives to be achieved. 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**. The regulatory body referred to in Article 55 shall issue a non-binding opinion on whether the business plan **discriminates between applicants**.

4. Member States shall ensure that, under normal business conditions, the accounts of **the** infrastructure manager shall **over a period of no more than two years** at least balance income from infrastructure charges, surpluses from other commercial activities, **non refundable grants from private sources** and State funding, **including advance payments from the State where appropriate**, on the one hand, and infrastructure expenditure on the other, including **sustainable financing of long-term asset renewals**, where appropriate.

Without prejudice to the possible long-term aim of user cover of infrastructure costs for all modes of transport on the basis of fair, non-discriminatory competition between the various modes, where rail transport is able to compete with other modes of transport, within the charging framework of Articles 31 and 32, a Member State may require the infrastructure manager to balance his accounts without State funding

*Amendment*

(3) Paragraphs 1 and 2 shall not apply to

debts or interest due on such debts incurred by undertakings after **15 March 2001 or the date of accession to the Union for Member States which joined the Union after 15 March 2001.**

debts or interest due on such debts incurred by undertakings after **the entry into force of this Directive.**

*Justification*

*The task of putting railway undertakings on a sound financial footing and freeing them of their burden of historic debt remains an essential one. In spite of the provisions adopted as long ago as 1991 (Directive 91/440/EEC), in many countries this has not happened. If the railway sector is to be given effective support, its level of indebtedness must be reduced. In that connection, the date set, i.e. 15 March 2001 or the date of accession in the case of the new Member States, is too early.*

**Amendment 57**

**Proposal for a directive**

**Article 10 – paragraph 2 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***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.***

*Justification*

*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.*

## Amendment 58

### Proposal for a directive

#### Article 10 – paragraph 2 – subparagraph 4

##### *Text proposed by the Commission*

The Commission *may* adopt implementing measures setting out the details of the procedure and criteria to be followed for the application of this paragraph. Those measures, designed to ensure the implementation of this Directive under uniform conditions, shall be adopted as implementing acts in accordance with Article 63(3).

##### *Amendment*

The Commission *shall* adopt, *on the basis of the experience gained by the regulatory bodies, by 18 months after the entry into force of this Directive* implementing measures setting out the details of the procedure and criteria to be followed for the application of this paragraph. Those measures, designed to ensure the implementation of this Directive under uniform conditions, shall be adopted as implementing acts in accordance with Article 63(3).

##### *Justification*

*The Commission should be required to act within a period of 18 months after the entry into force which is considered a sufficiently long period for gaining experience as regards the handling of granting access to railway infrastructure.*

## Amendment 59

### Proposal for a directive

#### Article 11 - paragraph 2 - subparagraph 2

##### *Text proposed by the Commission*

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided, consulting 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 two months of receipt of all relevant information.*

##### *Amendment*

The competent authorities and the railway undertakings providing the public services shall provide the relevant regulatory body or bodies with the information reasonably required to reach a decision. The regulatory body shall consider the information provided, consulting all the relevant parties as appropriate, and shall inform the relevant parties of its reasoned decision within *one month from the receipt of the complaint.*

## Amendment 60

### Proposal for a directive

#### Article 11 - paragraph 4

*Text proposed by the Commission*

4. The Commission **may** adopt implementing measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

*Amendment*

4. The Commission **shall** adopt, ***on the basis of the experience gained by the regulatory bodies, by 18 months after the entry into force of this Directive*** implementing measures setting out the details of the procedure and criteria to be followed for the application of paragraphs 1, 2 and 3 of this Article. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with Article 63(3).

#### *Justification*

*This amendment makes an obligation for the Commission to adopt implementing acts setting out the procedure and criteria for the provisions related to the limitation of the right of access for services partly or totally covered by public services and to the requests referred to the regulatory bodies. The Commission is required to act within 18 months following the entry into force of the Directive.*

## Amendment 61

### Proposal for a directive

#### Article 12 – paragraph 4 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The Commission shall prepare a comparative analysis of the methods for the setting of the amounts of the levies in the Member States in order to establish a uniform method of calculation to determine the amount of the levies.***

## Amendment 62

### Proposal for a directive Article 13

*Text proposed by the Commission*

#### Article 13

##### 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.

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

Requests by railway undertakings for 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.***

*Amendment*

#### Article 13

##### Conditions of access to services

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 ***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 access to the service facility ***shall be answered within a fixed time limit set by the national regulatory body and*** 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. ***When refusing access to its service facility, the operator of the service facility shall propose an economically and technically viable***

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.

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

alternative *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 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 *by an applicant* take appropriate action, *bearing in mind the needs of all stakeholders concerned*, 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 belongs. However newly built maintenance and other technical facilities developed for new *high-speed* rolling stock, *referred to in Commission Decision 2008/232/EC<sup>1</sup>*, 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 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



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.**

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.

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<sup>1</sup> OJ L 84, 26.3.2008, p. 132

## Amendment 63

### Proposal for a directive

#### Article 14 – paragraph 1 – subparagraph 1

##### *Text proposed by the Commission*

***Any provisions contained in cross-border agreements between Member States which discriminate between*** railway undertakings, ***or which restrict*** the freedom of railway undertakings to operate cross-border services ***are hereby superseded***.

##### *Amendment*

Member States ***shall ensure that the cross-border agreements they conclude do not discriminate against certain*** railway undertakings or ***constitute restrictions on*** the freedom of railway undertakings to operate cross-border services.

##### *Justification*

*Cross-border agreements should continue to be a field of competence for the Member States in which they have freedom of action. The EU should act only if the objectives cannot be sufficiently achieved by the Member States and if they can be better achieved at Union level.*

## Amendment 64

### Proposal for a directive

#### Article 14 – paragraph 2 – subparagraph 2

##### *Text proposed by the Commission*

The Commission may adopt implementing measures ***setting out the details of the procedure to be followed for the application of this paragraph***. Those

##### *Amendment*

The Commission may adopt implementing measures ***specifying the procedural modalities of the cooperation*** procedure referred to in the previous subparagraph.

measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with **Article 63(3)**.

Those **implementing** measures, **designed** to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with **the advisory procedure referred to in Article 64(2)**.

#### *Justification*

*This amendment specifies further the objective of the implementing measures which the Commission may adopt.*

### **Amendment 65**

#### **Proposal for a directive Article 15**

##### *Text proposed by the Commission*

##### Article 15

##### Scope of market monitoring

1. The Commission shall make the necessary arrangements to monitor technical and economic conditions and market developments in European rail transport.
2. In this context, the Commission shall closely involve representatives of the Member States and of the sectors concerned in its work, including **users**, so that they are able better to monitor the development of the railway sector and the evolution of the market, to assess the effect of the measures adopted and to analyse the impact of the measures planned by the Commission.
3. The Commission shall monitor the use

##### *Amendment*

##### Article 15

##### Scope of market monitoring

1. 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.
2. In this context, the Commission shall closely involve representatives of the Member States, **including representatives of the regulatory bodies referred to in article 55**, and of the sectors concerned in its work, including **local and regional authorities concerned, the railways sector's social partners and users**, so that they are able better to monitor the development of the railway sector and the evolution of the market, to assess the effect of the measures adopted and to analyse the impact of the measures planned by the Commission. **The Commission shall also involve the European Railway Agency where appropriate.**
3. 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 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 harmonisation between Member States . ***It shall ensure active cooperation between the appropriate regulatory bodies in the Member States.***

4. The Commission shall report ***on a regular basis*** to the European Parliament and the Council on:

- (a) the evolution of the internal market in rail services;
- (b) the framework conditions, including for public passenger transport services by rail;
- (c) the state of the European railway network;
- (d) the utilisation of access rights;
- (e) barriers to more effective rail services;
- (f) infrastructure limitations;
- (g) the need for legislation.

5. For the purposes of the Commission's market monitoring, Member States shall supply on an annual basis the information indicated in Annex IV, as well as all other necessary data requested by the Commission.

of the networks and the evolution of framework conditions in the rail sector, in particular infrastructure charging, capacity allocation, investments in railway infrastructure, developments as regards prices and the quality of rail transport services, rail transport services covered by public service contracts, licensing, ***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.

4. The Commission shall report ***every two years*** to the European Parliament and the Council on:

- (a) the evolution of the internal market in rail services ***and rail-related services including the degree of market opening***;
- (b) the framework conditions, including for public passenger transport services by rail;  
***(ba) the development of employment, working and social conditions in the sector***;
- (c) the state of the European railway network;
- (d) the utilisation of access rights;
- (e) barriers to more effective rail services;
- (f) infrastructure limitations;
- (g) the need for legislation.

5. For the purposes of the Commission's market monitoring, Member States shall supply on an annual basis the ***following*** information ***and as*** indicated in Annex IV, as well as all other necessary data requested by the Commission:

- (a) the evolution of rail transport performance and compensation for Public Service Obligations (PSO)***;
- (b) the degree of market opening and fair competition in each Member State; and the modal share of railway undertakings***

- in total transport performance;*
- (c) the resources and activities of regulatory bodies dedicated to their function as appeal bodies;*
- (d) the relevant developments as regards restructuring of the incumbent railway undertaking and adoption/implementation of national transport strategies over the previous year;*
- (e) the important training initiatives/measures in the field of railway transport taken in a Member State during the previous year;*
- (f) the employment and the social conditions of railway undertakings, infrastructure managers and of other companies active in the railway sector at the end of the previous year;*
- (g) the investments in the high-speed rail network during the previous year;*
- (h) the length of the railway network at the end of the previous year;*
- (i) the track access charges during the previous year;*
- (j) the existence of a performance scheme set up according to Article 35 of this Directive;*
- (k) the number of active licences issued by the competent national authority;*
- (l) the status of ERTMS deployment;*
- (m) the number of incidents, accidents and serious accidents as defined by Directive 2004/49/EC which occurred on the network during the previous year;*
- (n) other relevant developments;*
- (o) the development of the maintenance markets and the degree of opening of the market for maintenance services.*

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

Annex IV may be amended in the light of experience *in order to update the information needed for the rail market monitoring* in accordance with the

procedure referred to in Article 60.

## Amendment 66

### Proposal for a directive Article 17 – paragraph 5

*Text proposed by the Commission*

5. The Commission *may* adopt implementing measures ***setting out the details of the procedure*** to be followed for the ***application of this Article including the use*** of a common template for the licence. Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with ***Article 63(3)***.

*Amendment*

5. The Commission ***shall*** adopt implementing measures ***specifying the procedural modalities*** to be followed for the ***issuing of licences and setting up*** of a common template for the licence ***in accordance with the requirements set out in Section 2***. Those ***implementing*** measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts in accordance with ***the advisory procedure referred to in Article 64(2)***.

*Justification*

*This amendment specifies further the scope of the implementing measures which the Commission may adopt.*

## Amendment 67

### Proposal for a directive Article 19 – point (d)

*Text proposed by the Commission*

(d) have not been convicted of ***serious or repeated*** failure to fulfil social or labour law obligations, including obligations under occupational safety and health legislation, and customs law obligations in the case of a company seeking to operate cross-border freight transport subject to customs procedures.

*Amendment*

(d) have not been convicted of ***any*** failure to fulfil social or labour law obligations, including obligations under ***safety***, occupational safety and health legislation, and customs law obligations in the case of a company seeking to operate cross-border freight transport subject to customs procedures.

### *Justification*

*This 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.*

## **Amendment 68**

### **Proposal for a directive Article 20 – paragraph 1**

#### *Text proposed by the Commission*

The requirements relating to financial fitness shall be met when an applicant railway undertaking can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months.

#### *Amendment*

The requirements relating to financial fitness shall be met when an applicant railway undertaking can demonstrate that it will be able to meet its actual and potential obligations, established under realistic assumptions, for a period of twelve months. ***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.***

### *Justification*

*This element takes up Annex V which is considered an essential element of the text.*

## **Amendment 69**

### **Proposal for a directive Article 20 – paragraph 2**

#### *Text proposed by the Commission*

For these purposes , each applicant shall ***give at least the*** particulars ***listed in Annex V.***

#### *Amendment*

For these purposes , each applicant ***shall provide detailed*** particulars ***on the following aspects:***

- (a) available funds, including the bank balance, pledged overdraft provisions and loans;***
- (b) funds and assets available as security;***
- (c) working capital;***

*(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;*

*(e) charges on an undertaking's assets;*

*(f) taxes and social security contributions.*

*Justification*

*This is taken from Annex V which is considered an essential element of the text. Applicants should also provide detailed information on their tax payments and social security contributions.*

**Amendment 70**

**Proposal for a directive**

**Article 20 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*The licensing authority shall not consider an applicant financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.*

*Justification*

*This is taken from Annex V which is considered an essential element of the text.*

**Amendment 71**

**Proposal for a directive**

**Article 20 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. Those documents must include information concerning the matters referred to points (a) to (f) of paragraph 2 of this Article.*

### *Justification*

*This is taken from Annex V which is considered an essential element of the text.*

## **Amendment 72**

### **Proposal for a directive Article 20 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*Annex V may be amended in the light of experience in accordance with the procedure referred to in Article 60.*      **deleted**

### *Justification*

*Annex V is considered to be an essential element of the text. Therefore its content is entirely moved to Article 20.*

## **Amendment 73**

### **Proposal for a directive Article 21**

*Text proposed by the Commission*

*Amendment*

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 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.***

## **Amendment 74**

### **Proposal for a directive Article 22 – paragraph 1**



*Text proposed by the Commission*

Without prejudice to Chapter III of Regulation (EC) No 1371/2007 of the European Parliament and of the Council, a railway undertaking shall be adequately insured for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of freight, mail and third parties.

*Amendment*

Without prejudice to Chapter III of Regulation (EC) No 1371/2007 of the European Parliament and of the Council, a railway undertaking shall be adequately insured for cover, ***or have equivalent guarantees and arrangements where approved by the regulator***, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of freight, mail and third parties.

*Justification*

*Special consideration should be given to heritage rail operations using the national rail network, subject to approval by the national regulator.*

**Amendment 75**

**Proposal for a directive**  
**Article 27 – paragraph 1**

*Text proposed by the Commission*

1. The infrastructure manager shall, after consultation with the interested parties, including the regulatory body referred to in Article 55, develop and publish a network statement obtainable against payment of a fee which shall not exceed the cost of publication of that statement. The network statement shall be published in at least two official languages of the Union. The content of the network statement shall be made available free of charge in electronic format through the web portal of the European Railway Agency.

*Amendment*

1. The infrastructure manager shall, after consultation with the interested parties, including the regulatory body referred to in Article 55, develop and publish a network statement obtainable against payment of a fee which shall not exceed the cost of publication of that statement. The network statement shall be published in at least two official languages of the Union, ***one of which shall be English***. The content of the network statement shall be made available free of charge in electronic format through the web portal of the European Railway Agency.

*Justification*

*The use of an international language like English should facilitate the comprehension of the elements contained in the network statement.*

## Amendment 76

### Proposal for a directive Article 27 – paragraph 2

#### *Text proposed by the Commission*

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain information setting out the conditions for access to the relevant railway infrastructure and to service facilities. ***The content of the network statement is laid down in Annex VI.***

#### *Amendment*

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain ***the following*** information setting out the conditions for access to the relevant railway infrastructure and to service facilities:

***(a) A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it.***

***(b) A section on charging principles and tariffs.***

***(c) A section on the principles and criteria for capacity allocation. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement.***

***(d) A section on information relating to the application for a licence referred to in Article 25 and rail safety certificates issued in accordance with Directive 2004/49/EC<sup>1</sup>.***

***(e) A section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the performance scheme referred to in Article 35.***

***(f) A section on information on access to and charging for service facilities referred to in Annex III.***

***(g) A model agreement for the conclusion***

*of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.*

*The information in the network statement shall be annually updated and consistent with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC. Infrastructure that is not appropriately maintained and its quality declining shall be reported in a timely manner to users;*

*The information in points (a) to (g) may be amended and specified by the Commission in accordance with Annex VI in the light of experience following the procedure referred to in Article 60.*

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<sup>1</sup> OJ L 164, 30.4.2004, p. 44.

#### *Justification*

*The list of the sections of the network statement is considered an essential element of the Directive. 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.*

#### **Amendment 77**

##### **Proposal for a directive**

##### **Article 29 – paragraph 2 – subparagraph 2**

###### *Text proposed by the Commission*

Member States shall ensure that representatives of infrastructure managers whose charging decisions have an impact on other infrastructures associate to coordinate the charging or to charge for the use of relevant infrastructure at international level.

###### *Amendment*

Member States shall ensure that representatives of infrastructure managers whose charging decisions have an impact on other infrastructures associate to **jointly** coordinate the charging or to charge for the use of relevant infrastructure at international level.

#### *Justification*

*This amendment reinforces the idea that infrastructure managers should create stronger coordinating structures amongst them.*

## Amendment 78

### Proposal for a directive Article 30

*Text proposed by the Commission*

#### Article 30

##### Infrastructure cost and accounts

1. Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be given incentives to reduce the costs of providing infrastructure and the level of access charges.

2. Member States shall ensure that paragraph 1 is implemented through a contractual agreement between the competent authority and the infrastructure manager covering a period of not less than **five** years which provides for State funding.

3. The terms of the contract and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contractual period.

Basic principles and parameters of such agreements are set out in Annex VII ***which may be amended in the light of experience in accordance with the procedure referred to in Article 60.***

Member States shall consult interested parties at least one month before the agreement is signed and publish it within one month of concluding it.

The infrastructure manager shall ensure that its business plan is consistent with the provisions of the contractual agreement.

***The regulatory body referred to in Article 55 shall assess the appropriateness of the envisaged medium to long-term income of the infrastructure manager for meeting***

*Amendment*

#### Article 30

##### Infrastructure cost and accounts

1. Infrastructure managers shall, with due regard to safety and to maintaining and improving the quality of the infrastructure service, be given incentives to reduce the costs of providing infrastructure and the level of access charges.

2. Member States shall ensure that paragraph 1 is implemented through a contractual agreement between the competent authority and the infrastructure manager covering a period of not less than **seven** years which provides for State funding.

3. The terms of the contract and the structure of the payments agreed to provide funding to the infrastructure manager shall be agreed in advance to cover the whole of the contractual period.

Basic principles and parameters of such agreements are set out in Annex VII.

Member States shall consult interested parties at least one month before the agreement is signed and publish it within one month of concluding it.

The infrastructure manager shall ensure that its business plan is consistent with the provisions of the contractual agreement.

***the agreed performance targets and shall make relevant recommendations, at least one month before the agreement is signed.***

***The competent authority shall give justifications to the regulatory body if it intends to deviate from these recommendations.***

4. Infrastructure managers shall develop and maintain an inventory of assets that they manage, which shall contain their current valuation as well as details of expenditure on renewal and upgrading of the infrastructure.

5. The infrastructure manager and the operator of service facilities shall establish a methodology for apportioning costs to the different services offered in accordance with Annex III and to types of rail vehicles, based on the best available understanding of cost causation and the principles of charging referred to in Article 31. Member States may require prior approval. This method shall be updated from time to time to match the best international practice.

4. Infrastructure managers shall develop and maintain an inventory of assets that they manage, which shall contain their current valuation as well as details of expenditure on renewal and upgrading of the infrastructure.

5. The infrastructure manager and the operator of service facilities shall establish a methodology for apportioning costs to the different services offered in accordance with Annex III and to types of rail vehicles, based on the best available understanding of cost causation and the principles of charging referred to in Article 31. Member States may require prior approval. This method shall be updated from time to time to match the best international practice.

## **Amendment 79**

### **Proposal for a directive Article 31**

*Text proposed by the Commission*

#### **Article 31**

##### **Principles of charging**

1. Charges for the use of railway infrastructure and of service facilities shall be paid to the infrastructure manager and to the service facility operator respectively and used to fund their business.

2. Member States shall require the infrastructure manager and the service facility operator to provide the regulatory body with all necessary information on the charges imposed. The infrastructure

*Amendment*

#### **Article 31**

##### **Principles of charging**

1. Charges for the use of railway infrastructure and of service facilities shall be paid to the infrastructure manager and to the service facility operator respectively and used to fund their business.

2. Member States shall require the infrastructure manager and the service facility operator to provide the regulatory body with all necessary information on the charges imposed. The infrastructure

manager and the service facility operator must, in this regard, be able to demonstrate to each railway undertaking that infrastructure and service charges actually invoiced to the railway undertaking pursuant to Articles 30 to 37, comply with the methodology, rules, and, where applicable, scales laid down in the network statement.

3. Without prejudice to paragraphs 4 or 5 of this Article or to Article 32, the charges for the minimum access package shall be set at the cost that is directly incurred as a result of operating the train service, according to Annex VIII, point 1.

Annex VIII, point 1 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

4. The infrastructure charges may include a charge which reflects the scarcity of capacity of the identifiable section of the infrastructure during periods of congestion.

5. ***When charging for the cost of noise effects is allowed by Union legislation for road freight transport, the*** infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train in accordance with Annex VIII, point 2.

Annex VIII, point 2 may be amended in the light of experience, in accordance with the procedure referred to in Article 60, in particular to specify the elements of differentiated infrastructure charges.

manager and the service facility operator must, in this regard, be able to demonstrate to each railway undertaking that infrastructure and service charges actually invoiced to the railway undertaking pursuant to Articles 30 to 37, comply with the methodology, rules, and, where applicable, scales laid down in the network statement.

3. Without prejudice to paragraphs 4 or 5 of this Article or to Article 32, the charges for the minimum access package shall be set at the cost that is directly incurred as a result of operating the train service, according to Annex VIII, point 1.

Annex VIII, point 1 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

4. The infrastructure charges may include a charge which reflects the scarcity of capacity of the identifiable section of the infrastructure during periods of congestion.

5. Infrastructure charges shall be modified to take account of the cost of noise effects caused by the operation of the train in accordance with Annex VIII, point 2. ***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.***

Annex VIII, point 2 may be amended in the light of experience, in accordance with the procedure referred to in Article 60, in particular to specify the elements of differentiated infrastructure charges ***provided that this does not lead to a distortion of competition within the rail transport sector or with road transport to the detriment of rail transport.***

The infrastructure charges may be modified to take account of the cost of other environmental effects caused by the operation of the train not referred to in Annex VIII, point 2. Any such modification, which may ensure the internalisation of external costs of air pollutants emitted as a result of operating the train service, shall be differentiated according to the magnitude of the effect caused.

Charging of other environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is *allowed* by Union legislation for road freight transport. If the charging of these environmental costs for road freight transport is not allowed by Union legislation, such modification shall not result in any overall change in revenue to the infrastructure manager.

If charging for environmental costs generates additional revenue, it shall be for Member States to decide how the revenue is to be used. The relevant authorities shall keep the necessary information to ensure that the origin of the charging of environmental costs and its use can be traced. Member States shall provide the Commission with this information on a regular basis.

6. To avoid undesirable disproportionate fluctuations, the charges referred to in paragraphs 3, 4 and 5 may be averaged over a reasonable spread of train services and times. Nevertheless, the relative magnitudes of the infrastructure charge shall be related to the costs attributable to the services.

7. The supply of services referred to in Annex III, point 2, shall not be covered by this Article. In any event, the charge imposed for such services shall not exceed the cost of providing it, plus a reasonable profit.

The infrastructure charges may be modified to take account of the cost of other environmental effects caused by the operation of the train not referred to in Annex VIII, point 2. Any such modification, which may ensure the internalisation of external costs of air pollutants emitted as a result of operating the train service, shall be differentiated according to the magnitude of the effect caused.

Charging of other environmental costs which results in an increase in the overall revenue accruing to the infrastructure manager shall however be allowed only if such charging is *applied* by Union legislation for road freight transport. If the charging of these environmental costs for road freight transport is not allowed by Union legislation, such modification shall not result in any overall change in revenue to the infrastructure manager.

If charging for environmental costs generates additional revenue, it shall be for Member States to decide how the revenue is to be used *for the benefit of transport systems*. The relevant authorities shall keep the necessary information to ensure that the origin of the charging of environmental costs and its use can be traced. Member States shall provide the Commission with this information on a regular basis.

6. To avoid undesirable disproportionate fluctuations, the charges referred to in paragraphs 3, 4 and 5 may be averaged over a reasonable spread of train services and times. Nevertheless, the relative magnitudes of the infrastructure charge shall be related to the costs attributable to the services.

7. The supply of services referred to in Annex III, point 2, shall not be covered by this Article. In any event, the charge imposed for such services shall not exceed the cost of providing it, plus a reasonable profit.

8. Where services listed in Annex III, points 3 and 4, as additional and ancillary services are offered by only one supplier the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit.

9. Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to the infrastructure manager caused by the maintenance.

10. The operator of the facility for supply of the services referred to in Annex III, points 2, 3 and 4 shall provide the infrastructure manager with the information on charges to be included in the network statement according to Article 27.

8. Where services listed in Annex III, points 3 and 4, as additional and ancillary services are offered by only one supplier the charge imposed for such a service shall not exceed the cost of providing it, plus a reasonable profit.

9. Charges may be levied for capacity used for the purpose of infrastructure maintenance. Such charges shall not exceed the net revenue loss to the infrastructure manager caused by the maintenance.

10. The operator of the facility for supply of the services referred to in Annex III, points 2, 3 and 4 shall provide the infrastructure manager with the information on charges to be included in the network statement according to Article 27.

## Amendment 80

### Proposal for a directive Article 32

#### *Text proposed by the Commission*

##### Article 32

##### Exceptions to charging principles

1. 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 ***in particular of international rail freight***. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges must not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of

#### *Amendment*

##### Article 32

##### Exceptions to charging principles

1. In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may ***authorise the infrastructure manager***, if the market can bear this, to levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness ***of the railway sector***. The charging system shall respect the productivity increases achieved by railway undertakings.

The level of charges must not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of



return which the market can bear.

***These*** market segments shall be established in accordance with the ***criteria*** laid down in Annex VIII, point 3 ***subject to the prior approval of the regulatory body. For market segments for which there is no traffic, mark-ups shall not be included in the charging system.***

***Annex VIII, point 3 may be amended in the light of experience in accordance with the procedure referred to in Article 60.***

2. For specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue

return which the market can bear.

***Before approving the levy of such mark-ups, a Member State shall ensure that the infrastructure manager evaluates their relevance for specific market segments. The list of market segments defined by infrastructure managers shall contain at least the three following ones: freight services, passenger services within the framework of a public service contract and other passenger services. Infrastructure managers may further distinguish market segments.***

***Market segments in which railway undertakings are not currently operating but may provide services during the period of validity of the charging system shall also be defined. The infrastructure manager shall not include a mark-up in the charging system for these market segments***

***The list of market segments shall be published in the network statement and shall be reviewed at least every five years.***

***Additional*** market segments shall be established in accordance with the ***procedure*** laid down in Annex VIII, point 3.

***1a. For the carriage of goods from and to third countries operated on a network whose track gauge is different from the main rail network within the Union, infrastructure managers may set higher charges in order to obtain full cost recovery of the costs incurred***

2. For specific future investment projects, or specific investment projects that have been completed after 1988, the infrastructure manager may set or continue

to set higher charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

3. 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 Annex VIII, point 5.

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

4. To prevent discrimination, it shall be ensured that any given infrastructure manager's average and marginal charges for equivalent uses of its infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

5. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 1, it shall make them public at least three months in advance of the deadline for the publication of the network statement according to Article 27(4).

to set higher charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness or both and could not otherwise be or have been undertaken. Such a charging arrangement may also incorporate agreements on the sharing of the risk associated with new investments.

3. 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 Annex VIII, point 5. ***The infrastructure manager shall be able to ensure that such a reduction does not result in a loss of revenue. This reduction shall be offset by higher charges on the same railway line for trains not equipped with ETCS.***

Annex VIII, point 5 may be amended in the light of experience in accordance with the procedure referred to in Article 60 ***in order to further promote ERTMS.***

4. To prevent discrimination, it shall be ensured that any given infrastructure manager's average and marginal charges for equivalent uses of its infrastructure are comparable and that comparable services in the same market segment are subject to the same charges. The infrastructure manager shall show in the network statement that the charging system meets these requirements in so far as this can be done without disclosing confidential business information.

5. If an infrastructure manager intends to modify the essential elements of the charging system referred to in paragraph 1, it shall make them public at least three months in advance of the deadline for the publication of the network statement according to Article 27(4).

***Member States may decide to publish the charging framework and charging rules applicable specifically to international***

*freight services from and to third countries operated on a network whose track gauge is different from the main rail network within the Union with different instruments and deadlines than those provided under Article 29(1) when this is required to ensure fair competition.*

## **Amendment 81**

### **Proposal for a directive**

#### **Article 35 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

The basic principles of the performance scheme as *listed in Annex VIII, point 4* shall apply throughout the network.

*Amendment*

*(a) 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;*

*(b) The infrastructure manager shall communicate to the railway undertakings the timetable, on the basis of which delays will be calculated, at least five days before the train run;*

*(c) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.*

*(d) Once a year, the infrastructure*

*manager shall publish the annual average level of service quality achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.*

The basic principles of the performance scheme *include the following elements which* shall apply throughout the network.

#### *Justification*

*These paragraphs are identical with paragraphs a, b, g, h of Annex VIII, point 4. They are considered essential elements of the Directive as they set out the main parameters and procedural aspects as regards the performance scheme.*

### **Amendment 82**

#### **Proposal for a directive**

#### **Article 35 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

Annex VIII, point 4 may be amended in the light of experience in accordance with the procedure referred to in Article 60.

##### *Amendment*

Annex VIII, point 4 ***containing further elements regarding the performance scheme*** may be amended in the light of experience in accordance with the procedure referred to in Article 60.

#### *Justification*

*After having moved the main elements of Annex VIII point 4 to the main text, the annex contains more detailed elements of the performance scheme which can be modified by the Commission. A sufficient degree of flexibility is thereby ensured.*

### **Amendment 83**

#### **Proposal for a directive**

#### **Article 36 – paragraph 1**

##### *Text proposed by the Commission*

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. This charge shall provide incentives for efficient use of capacity. If ***there is*** more ***than one***

##### *Amendment*

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. This charge shall provide incentives for efficient use of capacity. If ***two or*** more ***applicants request***

***applicant for a train path*** to be allocated under the annual timetable exercise, a reservation charge shall be levied.

***overlapping train paths*** to be allocated under the annual timetable exercise, a reservation charge shall be levied ***on the applicant to which the entire train path or a part of it was allocated but not used.***

#### *Justification*

*In case that more applicants request a train path, a reservation charge shall be imposed only in situation when train path is allocated to an applicant that does not use it.*

### **Amendment 84**

#### **Proposal for a directive Article 41 – paragraph 1**

##### *Text proposed by the Commission*

1. Requests for infrastructure capacity may be made by applicants ***within the meaning of this Directive.***

##### *Amendment*

1. Requests for infrastructure capacity may be made by applicants. ***In order to use such infrastructure capacity applicants shall appoint a railway undertaking to conclude an agreement with the infrastructure manager in accordance with Article 28.***

#### *Justification*

*This amendment takes up the wording used by the regulation 913/2010 on a European rail network for competitive freight.*

### **Amendment 85**

#### **Proposal for a directive Article 40 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

Member States shall ensure that representatives of infrastructure managers whose allocation decisions have an impact on other infrastructure managers associate in order to coordinate the allocation of or to allocate all relevant infrastructure capacity at an international level, without prejudice to the specific rules contained in Union legislation on rail freight oriented

##### *Amendment*

Member States shall ensure that representatives of infrastructure managers whose allocation decisions have an impact on other infrastructure managers associate in order to coordinate the allocation of or to allocate all relevant infrastructure capacity at an international level, without prejudice to the specific rules contained in Union legislation on rail freight oriented

networks. Appropriate representatives of infrastructure managers from third countries may be associated with these procedures.

networks. ***Participants in this cooperation shall ensure that its membership, methods of operation and all relevant criteria which are used for assessing and allocating infrastructure capacity be made publicly available.*** Appropriate representatives of infrastructure managers from third countries may be associated with these procedures.

#### *Justification*

*This amendment seeks to integrate Article 40(4) into Article 40(1).*

### **Amendment 86**

#### **Proposal for a directive Article 40 – paragraph 2**

##### *Text proposed by the Commission*

2. The Commission and representatives of the regulatory bodies, which co-operate according to Article 57, shall be informed of ***and invited to attend as observers all meetings at which*** common principles and practices for the allocation of infrastructure ***are developed***. In the case of IT-based allocation systems, the regulatory bodies shall receive sufficient information from these systems to allow them to perform their regulatory supervision in accordance with the provisions of Article 56.

##### *Amendment*

2. The Commission and representatives of the regulatory bodies, which co-operate according to Article 57, shall be informed of common principles and practices for the allocation of infrastructure. In the case of IT-based allocation systems, the regulatory bodies shall receive sufficient information from these systems to allow them to perform their regulatory supervision in accordance with the provisions of Article 56.

#### *Justification*

*The legal system applicable in the European Union allows undertakings to organise their activities freely, without being obliged to invite observers. The Commission and the regulatory bodies shall be informed of the decisions taken by the undertakings.*

## Amendment 87

### Proposal for a directive Article 41 – paragraph 3

*Text proposed by the Commission*

3. ***The Commission may adopt implementing measures setting out*** the details of the criteria to be followed for the application of paragraph 2. ***Those measures, designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts*** in accordance with Article 63(3).

*Amendment*

3. The details of the criteria to be followed for the application of paragraph 2 ***may be amended in the light of experience*** in accordance with ***the procedure referred to in Article 60.***

*Justification*

*The original wording "setting out the details of the criteria" suggests that the objective of this provision is to supplement the act. This requires the delegation of powers to enable the Commission to do so.*

## Amendment 88

### Proposal for a directive Article 43 – paragraph 2

*Text proposed by the Commission*

2. Infrastructure managers shall agree with the other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary.

*Amendment*

2. Infrastructure managers shall agree with the other relevant infrastructure managers concerned which international train paths are to be included in the working timetable, before commencing consultation on the draft working timetable. Adjustments shall only be made if absolutely necessary ***and must be duly justified.***

*Justification*

*This would bring greater transparency to management.*

## Amendment 89

**Proposal for a directive**  
**Article 47 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

In order to guarantee the development of adequate transport services within this framework, in particular to comply with public-service requirements or promote the development of rail freight, Member States may take any measures necessary, under non-discriminatory conditions, to ensure that such services are given priority when infrastructure capacity is allocated.

*Amendment*

In order to guarantee the development of adequate transport services within this framework, in particular to comply with public-service requirements or promote the development of rail freight, ***particularly international freight***, Member States may take any measures necessary, under non-discriminatory conditions, to ensure that such services are given priority when infrastructure capacity is allocated.

*Justification*

*If we wish to encourage use of rail transport at European level, international rail services should be given priority status.*

**Amendment 90**

**Proposal for a directive**  
**Article 47 – paragraph 5**

*Text proposed by the Commission*

***5. The importance of freight services and in particular international freight services shall be given adequate consideration in determining priority*** criteria.

*Amendment*

***5. Priority*** criteria ***shall include freight services and in particular international freight services.***

*Justification*

*The phrase ‘shall be given adequate consideration’ is insufficiently specific and overly ambiguous; if the Commission intends to promote rail freight, particularly international freight, it should say so in clear terms.*



## Amendment 91

### Proposal for a directive

#### Article 51 – paragraph 2 – subparagraph 4

*Text proposed by the Commission*

The plan may be subject to prior approval by the Member State. The regulatory body referred to in Article 55 ***may issue an opinion on whether the actions identified in the plan are appropriate.***

*Amendment*

The plan may be subject to prior approval by the Member State. The regulatory body referred to in Article 55 ***shall supervise the consultation process to ensure that it is carried out in a non-discriminatory manner.***

*Justification*

*The Regulatory body should not have to interfere with business decisions by the infrastructure manager as this might risk its position as an objective arbitrary.*

## Amendment 92

### Proposal for a directive

#### Article 51 – paragraph 2 – subparagraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***Where a trans-European network or a train path having a significant impact on one or several trans-European networks is congested, the network of regulatory bodies defined in Article 57 may issue an opinion on whether the actions in the plan are appropriate.***

*Justification*

*This amendment seeks to provide for the network of regulatory bodies to be consulted if one or several trans-European networks were to be significantly affected by congestion.*

## Amendment 93

### Proposal for a directive

#### Article 53 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The infrastructure manager shall inform

3. The infrastructure manager shall inform

*in due time* interested parties about unscheduled maintenance work.

interested parties about unscheduled maintenance work ***at east one week prior to it.***

*Justification*

*It makes sense for interested parties to be informed of when maintenance work is to begin so that, despite the unscheduled nature of such work, the necessary precautions may be taken.*

**Amendment 94**

**Proposal for a directive**

**Article 54 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Infrastructure managers shall have action plans to deal with accidents or technical failures.***

*Justification*

*Infrastructure managers should have clearly defined action plans to deal with accidents or technical failures. These plans would help draw up contingency plans more quickly and effectively and should be shared among all infrastructure managers as good practices.*

**Amendment 95**

**Proposal for a directive**

**Article 54 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

***3. Member States may require railway undertakings to be involved in assuring the enforcement and monitoring of their own compliance with the safety standards and rules.***

***3. Save in the case of force majeure, including urgent safety-critical work, a train path allocated to a freight operation pursuant to this Article may not be cancelled less than two months before its scheduled time in the working timetable if the applicant concerned does not give its approval for such cancellation. In such a case the infrastructure manager concerned shall make an effort to propose to the applicant a train path of an equivalent quality and reliability which the applicant has the right to accept or***

***refuse. If the applicant refuses, he shall be entitled at least to reimbursement of the corresponding charge.***

*Justification*

*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. It takes up and supplements the wording already included in the regulation on European freight corridors (Regulation (EU) No 913/2010).*

**Amendment 96**

**Proposal for a directive  
Article 55**

*Text proposed by the Commission*

Article 55

Regulatory **body**

1. 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 authority. 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.

2. Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated

*Amendment*

Article 55

**National** regulatory **bodies**

1. 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 authority. 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 have the necessary organisational capacity in terms of human and material resources, which shall be adequate for the level of activity of the rail sector of the Member State, such as the volume of traffic, and for the size of the network, in order to carry out the tasks assigned to it by Article 56.***

2. Member States may set up regulatory bodies which are competent for several regulated sectors, if these integrated

regulatory authorities fulfil the independence requirements set out in paragraph 1.

3. The president and governing board of the regulatory body for the railway sector shall be appointed for a fixed and renewable term under clear rules which guarantee independence. They shall be selected from among persons who have had no professional position or responsibility, interest or business relationship, directly or indirectly, with the regulated undertakings or entities for a period of **three** years before their appointment, and during their term of office. Afterwards, they shall have no professional position or responsibility, interest or business relationship with any of the regulated undertakings or entities for a period of not less than **three** years. They shall have full authority over the recruitment and management of the staff of the regulatory body.

regulatory authorities fulfil the independence requirements set out in paragraph 1.

3. 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. They shall be selected from among persons who have **knowledge of and experience in the regulation of the railway sector, or knowledge of and experience in the regulation of other sectors, and preferably among persons who have** had no professional position or responsibility, interest or business relationship, directly or indirectly, with the regulated undertakings or entities for a period of **at least two** years **or any longer period defined in accordance with the national law** before their appointment, and during their term of office. **They shall explicitly state this by an appropriate declaration of interests.** Afterwards, they shall have no professional position or responsibility, interest or business relationship with any of the regulated undertakings or entities for a period of not less than **two** years **or any longer period defined in accordance with the national law**. They shall have full authority over the recruitment and management of the staff of the regulatory body. **They must act entirely independently and may under no circumstances be influenced by instructions from a government or a private or public undertaking.**

## Amendment 97

### Proposal for a directive Article 56

*Text proposed by the Commission*

#### Article 56

##### Functions of the regulatory **body**

1. Without prejudice to Article 46(6), an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:

- (a) the network statement;
- (b) the criteria set out in it;
- (c) the allocation process and its result;
- (d) the charging scheme;
- (e) the level or structure of infrastructure charges which it is, or may be, required to pay;
- (f) arrangements for access in accordance with Articles 10, 11 and 12;
- (g) access to and charging for services in accordance with Article 13;

*Amendment*

#### Article 56

##### Functions of the **national** regulatory **bodies**

1. Without prejudice to Article 46(6), an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning

- (a) the network statement;
- (b) the criteria set out in it;
- (c) the allocation process and its result;
- (d) the charging scheme;
- (e) the level or structure of infrastructure charges which it is, or may be, required to pay;
- (f) arrangements for access in accordance with Articles 10, 11 and 12;
- (g) access to and charging for services in accordance with Article 13;

***(ga) licensing decisions, in cases where the regulatory body is not also the body issuing licences in accordance with Article 16.***

***1a. The regulatory body shall be required to take a decision on any complaints to remedy the situation within a maximum period of one month from the receipt of the complaint and take action on its own initiative. In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the regulatory body shall either confirm that no modification of the***

*infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.*

*The Commission shall on its own initiative examine the application and enforcement of the provisions related to the mandate of the regulatory bodies and their decision-making deadlines in accordance with the procedure referred to in Article 63(2).*

2. The regulatory body shall *also* have the power to monitor the competition in the rail services markets and review points (a) to (g) of paragraph 1 on its own initiative and with a view to preventing discrimination between applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate between applicants. ***The regulatory body shall have the necessary organisational capacity to carry out these tasks.***

2. The regulatory body shall have the power to monitor the competition, ***to stop discriminatory and market distortion developments*** in the rail services markets and ***to*** review points (a) to (ga) of paragraph 1 on its own initiative and with a view to preventing discrimination between applicants, ***including through appropriate corrective measures***. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate between applicants. ***To this end, the regulatory body shall also cooperate closely with the national safety authority responsible for assessing the conformity or suitability for use of interoperability constituents or for appraising the 'EC' procedure for verification of subsystems in accordance with Directive 2008/57/EC. At the request of applicants in procedures before the national safety authority which may have consequences for market access the national safety authority shall inform the regulatory body of the relevant aspects of the procedure. The regulatory body shall make recommendations. The national safety authority shall give justifications to the regulatory body if it intends to deviate from these recommendations.***

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with Chapter IV, Section 2 and are

3. The regulatory body shall ensure that charges set by the infrastructure manager comply with Chapter IV, Section 2 and are

non-discriminatory. Negotiations between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Chapter.

non-discriminatory. Negotiations between applicants and an infrastructure manager concerning the level of infrastructure charges shall only be permitted if these are carried out under the supervision of the regulatory body. The regulatory body shall intervene if negotiations are likely to contravene the requirements of this Chapter.

***3a. The regulatory body shall verify that railway undertakings' and infrastructure managers' accounting is in compliance with the accounting separation provisions laid down in Article 6.***

***3b. The regulatory body shall determine, if provided by national law, in accordance with Article 10(2) whether the principal purpose of a service is to carry passengers between stations located in different Member States and in accordance with Article 11(2) whether the economic equilibrium of a public service contract is compromised by services provided for in Article 10 between a place of departure and a destination which are covered by one or more public service contracts.***

***3c. The regulatory body shall communicate to the Commission any complaint related to a decision by a regulatory body related to paragraphs 1 to 3b. Within two weeks after the receipt of the complaint the Commission shall, if necessary, request changes to the decision in question in order to ensure its compatibility with Union law. The regulatory body shall modify its decision, taking account of the changes requested by the Commission.***

***3d. The regulatory body shall consult, at least once a year, the representatives of the users of the rail freight and passenger transport services, to take into account their views on the rail market, including the service performance, the infrastructure charges, the amount and the transparency of the rail service prices.***

## **Amendment 98**

### **Proposal for a directive Article 56 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 56a**

##### ***Powers of the national regulatory bodies***

***1. In order to carry out the tasks listed in Article 56 the regulatory body shall have the power to:***

***(a) enforce its decisions with appropriate sanctions, including fines. A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another national administrative instance.***

***(b) request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned and to enforce such requests with appropriate sanctions, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring competition in the rail services markets. This includes data which are necessary for statistical and market observation purposes. Information requested must be supplied without undue delay.***

***(c) carry out audits or initiate external audits with infrastructure managers and, when relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6.***

***2. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. The appeal shall not have a suspensive effect***



*on the decision of the regulatory body.*

*2a. In the event of conflicts concerning decisions by the regulatory bodies for cross-border transport services, the concerned parties may appeal to the European Commission to obtain a binding decision on the compatibility of the decisions with the Union law within one month after the receipt of the appeal.*

*3. Member States shall ensure that decisions of the regulatory body are published.*

*4. Member States shall ensure that infrastructure managers and all undertakings or other entities performing different types of rail transport or infrastructure management, including operators of the service facilities, as referred to in Article 6 shall provide detailed regulatory accounts to the regulatory body so that it can carry out its different tasks. These regulatory accounts must contain at least the elements set out in Annex X. The regulatory body may also draw conclusions from these accounts concerning state aid issues which it shall report to the authorities responsible for resolving these issues.*

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

## Amendment 99

### Proposal for a directive Article 57

*Text proposed by the Commission*

#### Article 57

Cooperation between regulatory bodies

1. The national regulatory bodies shall exchange information about their work and

*Amendment*

#### Article 57

Cooperation between ***national*** regulatory ***bodies and powers of the Commission***

1. The national regulatory bodies shall exchange information about their work and

decision-making principles and practice and otherwise cooperate for the purpose of coordinating their decision-making across the Union. For this purpose they shall work together in *a working group* that convenes at regular intervals. *The Commission shall support the regulatory bodies in this task.*

2. The regulatory bodies shall be enabled to cooperate closely, including through working arrangements, for purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.

3. In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the regulatory body concerned shall consult the regulatory bodies of all other Member States through which the international train path concerned runs and request all necessary information from them before taking its decision.

decision-making principles and practice and otherwise cooperate for the purpose of coordinating their decision-making across the Union. For this purpose they shall work together in a *formally established network* that convenes at regular intervals *at the invitation of and chaired by the Commission. To this aim the Commission shall ensure active cooperation between the regulatory bodies and shall take action in case regulatory bodies fail to fulfil their mandate.*

*The Commission representatives shall comprise representatives from both the services in charge of transport and competition.*

*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 and own-initiative investigations on issues of access or charging relating to international rail services.*

2. The regulatory bodies shall be enabled to cooperate closely, including through working arrangements, for purposes of mutual assistance in their market monitoring tasks and handling complaints or investigations.

3. In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, as well as in the framework of monitoring competition on the market related to international rail transport services, the regulatory body concerned shall notify the *Commission and consult the* regulatory bodies of all other Member States through which the international train path concerned runs and request all necessary information from them before taking its decision. *The network of*

4. The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information that they themselves have the right to request under their national legislation. This information may only be used for the purpose of handling the complaint or investigation referred to in paragraph 3.

5. The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

6. Member States shall ensure that any associated representatives of infrastructure managers as referred to in Article 40(1) provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. This regulatory body shall be entitled to transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph 3.

7. Regulatory bodies shall develop common principles and practices for making decisions for which they are empowered under this Directive. The Commission may adopt ***implementing measures setting out*** such common principles and practices. ***Those measures designed to ensure the implementation of this Directive under uniform conditions shall be adopted as implementing acts*** in

***regulatory bodies shall also deliver an opinion.***

4. The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information that they themselves have the right to request under their national legislation. This information may only be used for the purpose of handling the complaint or investigation referred to in paragraph 3.

5. The regulatory body receiving the complaint or conducting an investigation on its own initiative shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

6. Member States shall ensure that any associated representatives of infrastructure managers as referred to in Article 40(1) provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in paragraph 3 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. This regulatory body shall be entitled to transfer such information regarding the international train path concerned to the regulatory bodies referred to in paragraph 3.

***6a. The Commission may on its own initiative participate in the activities listed under paragraphs 2 to 6 of Article 57 on which it shall keep informed the network of regulatory bodies mentioned in paragraph 1.***

7. The network of ***regulatory bodies established pursuant to paragraph 1*** shall develop common principles and practices for making decisions for which they are empowered under this Directive. The Commission may adopt ***and supplement*** such common principles and practices in accordance with ***the procedure referred to in Article 60.***

accordance with **Article 63(3)**.

Regulatory bodies shall also review decisions and practices of associations of infrastructure managers as referred to in Article 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport.

***The network of*** regulatory bodies shall also review decisions and practices of associations of infrastructure managers as referred to in Article 40(1) that implement provisions of this Directive or otherwise facilitate international rail transport.

## **Amendment 100**

### **Proposal for a directive Article 57 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 57a***

##### ***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 crossborder and international problems and to hear appeals of decisions taken by national regulatory bodies.***

## **Amendment 101**

### **Proposal for a directive Article 59 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 59a***

##### ***Article delegating power***

***The Commission shall be empowered to adopt delegated acts in accordance with Article 60 concerning the scope of market monitoring in accordance with Article 15, certain elements of the network statement in accordance with Article 27, certain***

*principles of charging in accordance with Article 31, the temporary reduction of the infrastructure charges for ETCS in accordance with Article 32(3), certain elements of the performance scheme in accordance with Article 35, the criteria to be followed regarding the requirements with regard to applicants for infrastructure in accordance with Article 41, the schedule for the allocation process in accordance with Article 43, the regulatory accounts in accordance with Article 56a and common principles and practices for making decision developed by regulatory bodies in accordance with Article 57.*

#### *Justification*

*The new 2011 inter-institutional common understanding on delegated acts requires the use of specific standard clauses which are inserted here to replace the wording of the Commission proposal.*

### **Amendment 102**

#### **Proposal for a directive Article 60**

*Text proposed by the Commission*

*Amendment*

#### **Article 60**

**deleted**

#### **Exercise of delegation**

**1. Powers to adopt the delegated acts referred to in Articles 7(1) second subparagraph, 13(5) second subparagraph, 15(5) second subparagraph, 20 third paragraph, 27(2), 30(3) second subparagraph, 31(5) second subparagraph, 32(1) third subparagraph, 32(3), 35(2), 43(1) and 56(8) third subparagraph shall be conferred on the Commission for an indeterminate period of time.**

**2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the**

*Council.*

**3. Powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 61 and 62.**

*Justification*

*The new 2011 inter-institutional common understanding on delegated acts requires the use of specific standard clauses which are inserted in Article 60 a to replace the wording of the Commission's proposal.*

**Amendment 103**

**Proposal for a directive  
Article 60 a new**

*Text proposed by the Commission*

*Amendment*

**Article 60a**

***Exercise of the delegation***

***The delegation of power referred to in Articles 15(5), 27(2), 31(3) and 31(5), 32(3), 35(2), 41(3), 43(1), 56a (6), 57(7) shall be conferred on the Commission for a period of five years from the date of entry into force of the basic legislative act. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. 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.***

***3. The delegation of power referred to in Articles 15(5), 27(2), 31(3) and 31(5), 32(3), 35(2), 41(3), 43(1), 56 a (6), 57(7) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day***

*following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

*4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*5. A delegated act adopted pursuant to Articles 15(5), 27(2), 31(3) and 31(5), 32(3), 35(2), 41(3), 43(1), 56 a (6), 57(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.*

#### *Justification*

*The new 2011 inter-institutional common understanding on delegated acts requires the use of specific standard clauses which are inserted here to replace the wording of the Commission's proposal.*

### **Amendment 104**

#### **Proposal for a directive Article 61**

*Text proposed by the Commission*

*Amendment*

#### **Article 61**

*deleted*

#### **Revocation of delegation**

**1. The delegation of powers referred to in Article 60(1) may be revoked by the European Parliament or by the Council.**

**2. The institution which has commenced an internal procedure for deciding**

*whether to revoke the delegation of powers shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for such revocation.*

*3. The revocation decision shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or on a later date specified therein. It shall not affect the validity of delegated acts already in force. It shall be published in the Official Journal of the European Union.*

#### *Justification*

*In accordance with the 2011 interinstitutional common understanding this Article would have to be deleted, as the content is moved to Art 60 a.*

### **Amendment 105**

#### **Proposal for a directive Article 62**

*Text proposed by the Commission*

*Amendment*

#### **Article 62**

*deleted*

#### **Objections to delegated acts**

*1. The European Parliament and the Council may object to a delegated act within a period of two months from the date of notification. On the initiative of the European Parliament or the Council this period shall be extended by one month.*

*2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force on the date stated in its*



*provisions.*

**3. If the European Parliament or the Council objects to an adopted delegated act, it shall not enter into force. The institution concerned shall state the reasons for objecting to the delegated act.**

*Justification*

*In accordance with the 2011 interinstitutional common understanding this Article would have to be deleted, as the content is moved to Art 60 a.*

**Amendment 106**

**Proposal for a directive**

**Article 63 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

At the request of a **Member State** or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of the provisions of this Directive, **and within** two months of receipt of such a request decide in accordance with the procedure referred to in Article 64(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

*Amendment*

At the request of a **national regulatory body and other competent national authorities** or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of the provisions of this Directive. **The national regulatory bodies shall maintain a database accessible to the European Commission of their draft decisions. Within** two months of receipt of such a request **the European Commission shall** decide in accordance with the procedure referred to in Article 64(2) whether the related measure may continue to be applied. The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

*Justification*

*This is to link better the role between the national regulatory body and the supervisory role of the European Commission.*

## Amendment 107

### Proposal for a directive

#### Article 63 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Without prejudice to Article 258 of the Treaty, any Member State may refer the Commission's decision to the Council within a time limit of one month from the date of the decision. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month from the date of the referral.*

*Amendment*

*At the request of a Member State or on its own initiative the Commission shall, in a specific case, examine the application and enforcement of the provisions of this Directive, and adopt a decision thereon in accordance with the procedure referred to in Article 64(3).*

*Justification*

*This amendment brings the paragraph closer to the standard procedure for implementing acts. The reference to Article 64(3) which refers to the examination procedure comes close to the content of the original provision of 63(2).*

## Amendment 108

### Proposal for a directive

#### Article 63 – paragraph 3

*Text proposed by the Commission*

3. Measures designed to ensure the implementation of the Directive under uniform conditions shall be adopted by the Commission as implementing acts in accordance with the procedure referred to in Article 64(3).

*Amendment*

3. Measures designed ***in accordance with Articles 10(2), 11(4), 14(2) and 17(5)*** to ensure the implementation of the Directive under uniform conditions shall be adopted by the Commission as implementing acts in accordance with the procedure referred to in Article 64(3).

*Justification*

*This amendment is introduced in order to specify more clearly for which articles the Commission is allowed to adopt implementing acts.*

## Amendment 109

### Proposal for a directive Article 64 – paragraph 1

*Text proposed by the Commission*

1. The Commission shall be assisted by *a* Committee.

*Amendment*

1. The Commission shall be assisted by ***the*** Committee ***established by this Directive. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***

*Justification*

*This is a technical amendment to bring the text up to date with the latest changes in legislation as regards the Commission's exercise of implementing powers and to specify the Committee referred to in this paragraph.*

## Amendment 110

### Proposal for a directive Article 64 – paragraph 2

*Text proposed by the Commission*

2. Where reference is made to this paragraph, Articles 3 and 7 of ***Decision 1999/468/EC*** shall apply, ***having regard to the provisions of Article 8 thereof.***

*Amendment*

2. Where reference is made to this paragraph, Articles 4 and 11 of ***Regulation (EU) No 182/2011*** shall apply.

*Justification*

*This is a technical amendment to bring the text up to date with the latest changes in legislation as regards the Commission's exercise of implementing powers.*

## Amendment 111

### Proposal for a directive Article 64-- paragraph 3

*Text proposed by the Commission*

3. Where reference is made to this paragraph, Article 5, and ***Article 7*** of ***Decision 1999/468/EC*** shall apply, ***having***

*Amendment*

3. Where reference is made to this paragraph, Articles 5 and 11 of ***Regulation***

*regard to the provisions of Article 8 thereof.*

*(EU) No 182/2011 shall apply.*

*Justification*

*This is a technical amendment to bring the text up to date with the latest changes in legislation as regards the Commission's exercise of implementing powers.*

**Amendment 112**

**Proposal for a directive**

**Article 66 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] and Annexes [...] by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a table showing the correlation between those provisions and this Directive.

*Amendment*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] and Annexes [...] by **12 months from the entry into force of this Directive** at the latest. They shall forthwith communicate to the Commission the text of those provisions and a table showing the correlation between those provisions and this Directive.

*Justification*

*This is a RECAST of 3 Directives that should have already been implemented by Member States thus all the infringement procedures ongoing; 12 months is more than enough.*

**Amendment 113**

**Proposal for a directive**

**Annex I – indent 6**

*Text proposed by the Commission*

– Access way for passengers and goods, including access by road;

*Amendment*

– Access way for passengers and goods, including access **for pedestrians and** by road;

## **Amendment 114**

### **Proposal for a directive Annex II**

*Text proposed by the Commission*

*Amendment*

#### **ANNEX II**

*deleted*

#### ***Essential functions of an infrastructure manager***

***(referred to in Article 7)***

***List of essential functions referred to in Article 7 :***

- decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths,***
- decision making on infrastructure charging, including determination and collection of the charges,***

*Justification*

*Annex II has been integrated in Article 7 as the content is considered an essential element of the text.*

## **Amendment 115**

### **Proposal for a directive Annex III**

*Text proposed by the Commission*

*Amendment*

#### **ANNEX III**

#### **ANNEX III**

**Services to be supplied to the railway undertakings**

**Services to be supplied to the railway undertakings**

**1. The minimum access package shall comprise:**

**1. The minimum access package shall comprise:**

- (a) handling of requests for railway infrastructure capacity;**
- (b) the right to utilise capacity which is granted;**
- (c) use of running track points and**

- (a) handling of requests for railway infrastructure capacity;**
- (b) the right to utilise capacity which is granted;**
- (c) use of running track points and**

junctions;

(d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;

(e) use of electrical supply equipment for traction current, where available;

**(f) refuelling facilities, where available;**

(g) all other information required to implement or operate the service for which capacity has been granted.

2. Access shall also be given to services facilities **and the supply of** services in **the following** facilities:

(a) passenger stations, their buildings and other facilities, including ticketing and travel information;

(b) freight terminals;

(c) marshalling yards;

(d) train formation facilities;

(e) storage sidings

(f) maintenance and other technical facilities;

(g) port facilities which are linked to rail activities;

(h) relief facilities, including towing;

3. Additional services may comprise:

(a) traction current, charges for **which** shall be shown on the invoices separately from charges for using the electrical supply equipment;

junctions;

(d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;

(e) use of electrical supply equipment for traction current, where available;

(g) all other information required to implement or operate the service for which capacity has been granted.

2. Access shall also be given to **the following** services facilities, **when they exist, and to the** services **supplied in these** facilities:

(a) passenger stations, their buildings and other facilities, including travel information **services and a suitable common location for** ticketing services;

(b) freight terminals;

(c) marshalling yards;

(d) train formation facilities;

(e) storage sidings;

(f) maintenance and other technical facilities;

(g) port facilities which are linked to rail activities;

(h) relief facilities, including towing;

**(ha) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately from charges for using refuelling facilities.**

3. Additional services may comprise:

(a) traction current, **the supplier of which a railway undertaking shall be free to choose; where the supplier of traction current is identical with the operator of the facility** charges for **traction current** shall be shown on the invoices separately from charges for using the electrical supply

- (b) pre-heating of passenger trains;
- (c) supply of fuel, charges for which shall be shown on the invoices separately from charges for using refuelling facilities;***
- (d) tailor-made contracts for:
  - control of transport of dangerous goods,
  - assistance in running abnormal trains.
- 4. Ancillary services may comprise:
  - (a) access to telecommunication networks;
  - (b) provision of supplementary information;
  - (c) technical inspection of rolling stock.

- equipment;
- (b) pre-heating of passenger trains;
- (d) tailor-made contracts for:
  - control of transport of dangerous goods,
  - assistance in running abnormal trains.
- 4. Ancillary services may comprise:
  - (a) access to telecommunication networks;
  - (b) provision of supplementary information;
  - (c) technical inspection of rolling stock.

## **Amendment 116**

### **Proposal for a directive Annex IV – point 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***16a. Incidents, accidents and serious accidents in accordance with Directive 2004/49/EC which occurred during the previous year.***

### *Justification*

*The information to be gathered and sent to the Commission on the development of the rail market should also include data on the safety situation of the railway in the EU Member States.*

## **Amendment 117**

### **Proposal for a directive Annex V**

*Text proposed by the Commission*

*Amendment*

***ANNEX V  
Financial fitness***

***deleted***

*(referred to in Article 20)*

***1. Financial fitness will be verified by means of a railway undertaking's annual accounts or, in the case of applicant undertakings unable to present annual accounts, a balance sheet. Detailed particulars must be provided, in particular on the following aspects:***

***(a) available funds, including the bank balance, pledged overdraft provisions and loans;***

***(b) funds and assets available as security;***

***(c) working capital;***

***(d) relevant costs, including purchase costs of payments to account for vehicles, land, buildings, installations and rolling stock;***

***(e) charges on an undertaking's assets.***

***2. In particular, an applicant is not financially fit if considerable arrears of taxes or social security are owed as a result of the undertaking's activity.***

***3. The authority may in particular require the submission of an audit report and suitable documents from a bank, public savings bank, accountant or auditor. These documents must include information concerning the matters referred to in point 1.***

#### *Justification*

*This Annex is integrated in Article 20 as it is considered an essential element of the text.*

### **Amendment 118**

#### **Proposal for a directive Annex VI – introductory sentence**

##### *Text proposed by the Commission*

The network statement referred to in Article 27 shall contain the following

##### *Amendment*

The ***sections of the*** network statement referred to in Article 27 shall contain the



information:

following information:

*Justification*

*As the main elements of Annex VI are transferred to Article 27, the introductory sentence to the annex needs to be adapted.*

**Amendment 119**

**Proposal for a directive  
Annex VI – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. A section setting out the nature of the infrastructure which is available to railway undertakings and the conditions of access to it. The information in this section shall be consistent with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC.***

***deleted***

*Justification*

*This part of Annex VI is moved to Article 27.*

**Amendment 120**

**Proposal for a directive  
Annex VI – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. A section on charging principles and tariffs. *This* shall contain appropriate details of the charging scheme as well as sufficient information on charges as well as other relevant information on access applying to the services listed in Annex III which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Articles **31 to 36**, as regards both costs and charges. It shall contain information on changes in charges already**

**2. *The* section on charging principles and tariffs shall contain appropriate details of the charging scheme as well as sufficient information on charges as well as other relevant information on access applying to the services listed in Annex III which are provided by only one supplier. It shall detail the methodology, rules and, where applicable, scales used for the application of Articles **31(4) and (5) to 36**, as regards both costs and charges. It shall contain information on changes in charges already**

decided upon or foreseen in the next five years.

decided upon or foreseen in the next five years.

*Justification*

*The text needs adapting as parts of Annex VI are moved to Article 27.*

**Amendment 121**

**Proposal for a directive  
Annex VI – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

A section on the principles and criteria for capacity allocation. ***This*** shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular:

*Amendment*

***The*** section on the principles and criteria for capacity allocation shall set out the general capacity characteristics of the infrastructure which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular:

*Justification*

*The text needs adapting as parts of Annex VI are moved to Article 27*

**Amendment 122**

**Proposal for a directive  
Annex VI – paragraphs 4 and 5**

*Text proposed by the Commission*

***4. A section on information relating to the application for a licence referred to in Article 25 and rail safety certificates issued in accordance with Directive 2004/49/EC.***

***5. A section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the***

*Amendment*

***deleted***

*performance scheme referred to in Article 35.*

*Justification*

*These parts of Annex VI are moved to Article 27.*

**Amendment 123**

**Proposal for a directive  
Annex VI – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. A section on information on access to and charging for service facilities referred to in Annex III. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement.** *deleted*

*Justification*

*This part of Annex VI is moved to Article 27.*

**Amendment 124**

**Proposal for a directive  
Annex VI – paragraph 7**

*Text proposed by the Commission*

*Amendment*

**7. A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.** *deleted*

*Justification*

*This part of Annex VI is moved to Article 27.*

## Amendment 125

### Proposal for a directive Annex VII

*Text proposed by the Commission*

#### Annex VII

Basic principles and parameters of contractual agreements between competent authorities and infrastructure managers

(referred to in Article 30)

The contractual agreement shall specify the provisions of Article 30 including:

1. the scope of the agreement as regards infrastructure and service facilities, structured according to Annex III. It shall cover all aspects of ***infrastructure development, including*** maintenance and renewal of the infrastructure already in operation. Construction of new infrastructure may be included as a separate item;
2. the structure of agreed payments apportioned to the infrastructure services listed in Annex III, to maintenance, ***to construction of new infrastructure*** and to dealing with existing maintenance backlogs;
3. user-oriented performance targets, in the form of indicators and quality criteria covering:
  - (a) train performance and customer satisfaction;
  - (b) network capacity,
  - (c) asset management,
  - (d) activity volumes,
  - (e) safety levels, and

*Amendment*

#### Annex VII

Basic principles and parameters of contractual agreements between competent authorities and infrastructure managers

(referred to in Article 30)

The contractual agreement shall specify the provisions of Article 30 including:

1. the scope of the agreement as regards infrastructure and service facilities, structured according to Annex III. It shall cover all aspects maintenance and renewal of the infrastructure already in operation. Construction of new infrastructure may be included as a separate item;
2. the structure of agreed payments, ***including indicative forecasts of the expected level of***, apportioned to the infrastructure services listed in Annex III, to maintenance ***including renewal and upgrading***, and to dealing with existing maintenance backlogs; ***payments to new infrastructure may be included as a separate item***;
3. user-oriented performance targets, in the form of indicators and quality criteria covering:
  - (a) train performance and customer satisfaction, ***in particular the effect of infrastructure quality on train reliability***;
  - (b) network capacity ***and the availability of infrastructure***,
  - (c) asset management,
  - (d) activity volumes,
  - (e) safety levels, and

- (f) environmental protection;
4. the amount of possible maintenance backlog, the expenditure earmarked for dealing with it and the assets which will be phased out of use and therefore trigger different financial flows;
5. the incentives in accordance with Article 30(1);
6. minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;
7. a mechanism that ensures that a significant share of cost reductions is passed on to users in the form of a reduced level of charges;
8. the agreed duration of the agreement, which shall be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, and the charging framework and rules set by the State;
9. rules for dealing with major disruptions of operations and emergency situations, ***including a minimum service level in case of strikes, if any***, and early termination of the contractual agreement, and information of users;
10. remedial measures to be taken if either of the parties is in breach of its contractual obligations; this includes conditions and procedures for renegotiation and early termination, including the role of the regulatory body.

- (f) environmental protection;
4. the amount of possible maintenance backlog, the expenditure earmarked for dealing with it and the assets which will be phased out of use and therefore trigger different financial flows;
5. the incentives in accordance with Article 30(1);
6. minimum reporting obligations for the infrastructure manager in terms of content and frequency of reporting, including information to be published annually;
7. a mechanism that ensures that a significant share of cost reductions is passed on to users in the form of a reduced level of charges, ***in accordance with the requirements of Article 30(1), without compromising the balancing of the infrastructure manager's accounts as required under Article 8(4)***;
8. the agreed duration of the agreement, which shall be synchronised and consistent with the duration of the infrastructure manager's business plan, concession or licence, and the charging framework and rules set by the State;
9. rules for dealing with major disruptions of operations and emergency situations, and early termination of the contractual agreement, and ***timely*** information of users;
10. remedial measures to be taken if either of the parties is in breach of its contractual obligations; this includes conditions and procedures for renegotiation and early termination, including the role of the regulatory body.

## Amendment 126

### Proposal for a directive Annex VIII – point 1

*Text proposed by the Commission*

#### ANNEX VIII

Requirements for costs and charges related to railway infrastructure

(referred to in Articles 31(3) and (5); 32(1) and (3) and Article 35)

1. Direct costs of the train service referred to in Article 31(3), which are related to infrastructure wear and tear, shall exclude the following items:

- (a) Network-wide overhead costs, ***including salaries and pensions***;
- (b) Interest payable on capital;
- (c) ***More than one tenth of costs related to scheduling, train path allocation, traffic management, dispatching and signalling of a train run***;
- (d) Depreciation of information, communication or telecommunication equipment;
- (e) Costs related to real estate management, in particular acquisition, selling, dismantling, decontamination, recultivation or renting of land or other fixed assets;
- (f) ***Social services***, schools, kindergartens, ***restaurants***;
- (g) Costs related to acts of God, accidents, service disruptions.

When direct costs exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network calculated on the basis of a train kilometer run, the infrastructure manager shall justify this in detail to the regulatory body. The average costs calculated for this purpose shall exclude cost elements referred to in points (e), (f) or (g).

*Amendment*

#### ANNEX VIII

Requirements for costs and charges related to railway infrastructure

(referred to in Articles 31(3) and (5); 32(1) and (3) and Article 35)

1. Direct costs of the train service referred to in Article 31(3), which are related to infrastructure wear and tear, shall exclude the following items:

- (a) Network-wide overhead costs;
- (b) Interest payable on capital;
- (d) Depreciation of information, communication or telecommunication equipment;
- (e) Costs related to real estate management, in particular acquisition, selling, dismantling, decontamination, recultivation or renting of land or other fixed assets;
- (f) Schools, kindergartens;
- (g) Costs related to acts of God, accidents, service disruptions.

When direct costs exceed, on a network-wide average, 35 % of average costs of maintaining, managing and renewing the network calculated on the basis of a train kilometer run, the infrastructure manager shall justify this in detail to the regulatory body. The average costs calculated for this purpose shall exclude cost elements referred to in points (e), (f) or (g).

## Amendment 127

### Proposal for a directive Annex VIII – paragraph 3

*Text proposed by the Commission*

3. The infrastructure manager shall demonstrate to the regulatory body the ability of a train service to pay mark-ups according to Article 32(1), ***whereby each of the services listed under a single one of the following points shall belong to different market segments:***

- (a) Passenger vs freight services;***
- (b) Trains carrying dangerous goods vs other freight trains;***
- (c) Domestic vs international services;***
- (d) Combined transport vs direct trains;***
- (e) Urban or regional vs interurban passenger services;***
- (f) Block trains vs single wagon load trains;***
- (g) Regular vs occasional train services.***

## Amendment 128

### Proposal for a directive Annex VIII – point 4 – point a

*Text proposed by the Commission*

***(a) In order to achieve an agreed level of service quality and not to endanger the***

*Amendment*

***3. The infrastructure manager shall define homogeneous market segments and corresponding mark-ups in the sense of Article 32(1), on the basis of a market study and after consultation of the applicants. With the exception of carriages referred to in Article 32.1 a, the infrastructure manager shall demonstrate to the regulatory body the ability of a train service to pay mark-ups according to Article 32(1). In case the infrastructure manager levies mark-ups, it shall develop a list of market segments to which the regulatory body shall give its prior approval.***

***deleted***

*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 value of delays, 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;*

*Justification*

*The deleted elements of Annex VIII are moved to Article 35.2.*

#### **Amendment 129**

##### **Proposal for a directive Annex VIII – point 4 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) The infrastructure manager shall communicate to the railway undertakings the timetable, on the basis of which delays will be calculated, at least five days before the train run;* **deleted**

*Justification*

*The deleted elements of Annex VIII are moved to Article 35.2.*

#### **Amendment 130**

##### **Proposal for a directive Annex VIII – point 4 – point g**

*Text proposed by the Commission*

*Amendment*

*(g) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be* **deleted**



*reached within a time limit of 10 working days.*

*Justification*

*The deleted elements of Annex VIII are moved to Article 35.2*

**Amendment 131**

**Proposal for a directive  
Annex VIII – point 4 – point h**

*Text proposed by the Commission*

*Amendment*

*(h) Once a year, the infrastructure manager shall publish the annual average level of service quality achieved by the railway undertakings on the basis of the main parameters agreed in the performance scheme.*

*deleted*

*Justification*

*The deleted elements of Annex VIII are moved to Article 35.2.*

**Amendment 132**

**Proposal for a directive  
Annex VIII – point 5**

*Text proposed by the Commission*

*Amendment*

5. The temporary reduction of the infrastructure charge for ETCS equipped trains, as referred to in Article 32(3) shall be established as follows:

For freight transport:

Year	Discount
2015	5%
2016	5%
2017	5%
2018	5%

5. The temporary reduction of the infrastructure charge for ETCS equipped trains, as referred to in Article 32(3) shall be established as follows:

For freight transport:

Year	Discount
2015	20%
2016	20%
2017	20%
2018	15%

2019	<b>5%</b>	2019	<b>10%</b>
2020	<b>5%</b>	2020	<b>8%</b>
2021	<b>4%</b>	2021	<b>6%</b>
2022	<b>3%</b>	2022	<b>4%</b>
2023	<b>2%</b>	2023	<b>3%</b>
2024	<b>1%</b>	2024	<b>3%</b>

For passenger transport

Year	Discount
------	----------

2020	<b>5%</b>
2021	<b>5%</b>
2022	<b>5%</b>
2023	<b>5%</b>
2024	<b>5%</b>

For passenger transport

Year	Discount
------	----------

<b>2015</b>	<b>10%</b>
<b>2016</b>	<b>10%</b>
<b>2017</b>	<b>10%</b>
<b>2018</b>	<b>10%</b>
<b>2019</b>	<b>10%</b>
2020	<b>8%</b>
2021	<b>6%</b>
2022	<b>5%</b>
2023	<b>4%</b>
2024	<b>2%</b>

## Amendment 133

### Proposal for a directive Annex 10 – point 1 – point c

*Text proposed by the Commission*

(c) include cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of the regulatory body;

*Amendment*

(c) include cost and profit categories making it possible to determine whether cross-subsidies between these different activities occurred, according to the requirements of **Article 6 and as deemed necessary and proportionate** by the regulatory body;

## EXPLANATORY STATEMENT

### 1. Background

The First Railway Package adopted in 2001 was the first serious attempt to stop the steady decline of railway transport and to reform the European regulatory framework. It aimed to ensure the sector's integration and to enhance its attractiveness compared to other transport modes.

Ten years later we see that this first reform was unable to improve significantly the railway's situation: rail transport was unable to catch up with other modes of transport, in particular road transport. For example, between 1996 and 2008 rail freight's share has decreased by almost 2% to 10,8% whereas road freight transport increased from 42,1% to 45,9%. This development is even more worrying against the background of a steady overall growth in freight transport of around 2,3% annually: the railways sector has been unable to profit from an otherwise favourable environment. Where trucks and planes cross borders seamlessly, transnational rail services encounter numerous technical, legal and political obstacles. Yet while road transport in particular shows more and more signs of over-saturation rail transport still holds potential for growth. Moreover, it can play a key role in supporting the EU's goals to reduce CO<sub>2</sub> emissions and make its economy more resource efficient. The European Commission in its 2011 White Paper therefore rightly attributes a major role to rail transport in achieving the goals of a more sustainable and greener transport system for Europe.

One of the main reasons for the railways' static situation is the many discrepancies in national rules. Regulation varies beyond what is healthy for the sector. This problem is being amplified by the flawed implementation of the first railway package by many Member States. Following Parliament's resolution of 11 June 2010 on this issue the Commission has taken 13 Member States to the European Court of Justice "*for failing to correctly implement various parts of the first railway package.*" These infringement procedures certainly demonstrate the need to clarify and improve legislation. Another reason for concern is Member States' lack of investment in infrastructure the quality of which determines to a large degree the sector's competitiveness. Many Member States have neglected the financing of rail while giving maximum support to road infrastructure.

### 2. The rapporteur's remarks and proposals

For all the reasons mentioned above, if the railway sector is to grow its modal share, the existing legislation needs a thorough revision. As the current system has demonstrated its shortcomings, rules need to be strengthened and harmonised and new elements need to be added to make railways more attractive as a mode of transport for both passengers and freight.

***The Recast should achieve a comprehensive and integrated European railway area. This objective is supported by your rapporteur, as it was already supported by the Parliament during the debates on the previous railway packages. The current reform should go beyond the limits of nationally defined interests in the railway sector. It is time now for the construction of a truly European railway area where passengers and goods can cross borders effortlessly.***

Your rapporteur would like to propose a number of amendments:

(a) Separation of infrastructure management and operation of transport services

*The lack of independence of infrastructure management prevents the true transnational integration of the rail networks which continue to be managed along national considerations that are often dominated by the interests of incumbent railways undertakings. This limits in turn the attractiveness of the railway for new operators, new services and eventually customers. It reduces the possibilities of cross-border transports which are of crucial importance for the rail to become competitive vis-à-vis the road (freight) and air (passenger). Due to the size of EU Member States many medium-distance connections of 300 km imply already crossing the border of one or several Member States.*

*The 2011 Commission White Paper lists among its most important initiatives the need to "ensure effective and non-discriminatory access to rail infrastructure". This means that the Commission is determined to further open the rail market in the near future. Therefore, if the rail market is to be liberalised, it is essential that conditions to operate in such an open market are as non-discriminatory and transparent as possible. Parliament, in its resolution of June 2010, recognised this link, stating that the infrastructure managers' "independence is a precondition to allow a fair, transparent and non-discriminatory treatment of all operators" (paragraph 7). In order to achieve this level-playing field the separation of infrastructure management and service operations has to be introduced, as also the Commission recognises in its White Paper. It is the aim of your rapporteur to prepare such a level-playing field before the rail market is further opened. Otherwise market opening could lead to negative developments whereby strong incumbent rail operators can continue to abuse their overly close connection with infrastructure management to the detriment of competitors.*

*Also, the current recast is dealing with those parts of legislation that would have to be re-negotiated again if unbundling would be dealt with at a later stage. Time and resources can be saved if the Parliament as a co-legislator decides to act now and introduce the necessary changes.*

*For these reasons, your rapporteur proposes a form of full separation in order to create independent control of the infrastructure from service operations and to ensure that the natural monopoly which is the network is managed to the benefit of all service operators. This would lay the basis for more competition, investments and better services. If the EU wants to increase the rail transport's modal share and create a single European railway area it needs coherently unbundled rail systems.*

#### ***(b) The regulatory body***

*Your rapporteur supports the Commission's approach to increase the independence and powers of national regulatory bodies and considers the reinforcement of regulatory control vital for the railway sector: efficient regulatory control at national and European level is the indispensable pre-condition to achieve any further integration of national rail markets, as it safeguards the rules of a fair and non-discriminatory railway market.*

*The European dimension of the regulatory control should be reinforced. Amendments are submitted that would lead to the creation of a European network of regulatory bodies which should pave way to a European regulatory body.*

#### ***(c) Financing of the infrastructure and levying of charges***

*Your rapporteur supports the Commission's plan to make the multiannual contract the standard procedure to formalise the funding Member States provide to infrastructure*

*managers. The duration of this agreement should be extended from five to seven years to enhance planning stability for the sector.*

*Parliament regularly criticised Member States' lack of investment and financing of the railway systems, in particular concerning the TEN-T network, despite specific provisions in Directive 2001/12 on the financing of infrastructure and the railway debt.*

*Regarding the modulation of infrastructure charges based on noise performance of trains, your rapporteur considers that the internalisation of externalities has to be coordinated between transport modes to create fair conditions of intra-modal and intermodal competition. She proposes amendments in order to stress this condition, in particular vis-à-vis road transport, and introduces a bonus system to increase investment incentives. Moreover, a bonus-malus system to encourage the use of ETCS equipment is proposed whereby ETCS-equipped trains receive a reduction in charges which is offset by higher charges for trains without ETCS. The system is to be revenue-neutral for the infrastructure manager.*

*Also one of the aims of the first package was the harmonisation of charges in order to simplify charging systems. It is important to agree on common standards on charges the details of which are mainly specified in Annex VIII.*

*(d) Conditions of access to services and service facilities*

*The Commission proposes the legal and organisational separation of service facilities from dominant railway undertakings. Easy access to service facilities is essential to help new entrants offering their services on the network. Your rapporteur supports the Commission's approach in this regard: service facility operators should be allowed to attract clients from all transport operators.*

*(e) Annexes and the scope of the delegated acts*

Nine of the twelve annexes of the proposal can be modified through delegated acts according to the Commission. Your rapporteur understands that the Commission needs sufficient flexibility to adapt rules according to legal, political and technical developments. However, the Directive should provide for a firm basis of regulation that gives clear indications as to which direction the Commission should move. Your rapporteur considers that annexes II to VIII contain essential elements of the Directive and therefore should be fully or partially modified through the normal legislative procedure. Furthermore, due to the changes brought about by the Treaty of Lisbon and a new inter-institutional common understanding on the exact wording of the provisions on delegated acts a number of technical amendments need to be tabled. Adaptations have to be inserted also concerning the provisions related to the implementing acts: a number of them should rather fall under the regime of delegated acts.

(f) Employment conditions

To make sure that employment development and working conditions in the railway sector take a more prominent role in the current legislation your rapporteur has prepared a number of amendments, such as making the respect of labour law and occupational safety rules an even stronger precondition for a railway undertaking when requesting a license. Also authorities shall be required to collect data on employment in a more complete way. Social partners should be more closely involved in the monitoring activities of the Commission.

(g) Safety

A number of terrible accidents have shown that, although rail transport is a very safe mode of transport, safety rules need to be as strict as possible. Compliance with safety requirements should therefore play a bigger role when railway operators apply for a license. Data on incidents in Member States should be gathered and provided to the Commission.

## PROCEDURE

<b>Title</b>	Single European railway area (recast version)			
<b>References</b>	COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)			
<b>Date submitted to Parliament</b>	17.9.2010			
<b>Committee responsible</b> Date announced in plenary	TRAN 23.9.2010			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 23.9.2010			
<b>Rapporteur(s)</b> Date appointed	Debora Serracchiani 27.9.2010			
<b>Discussed in committee</b>	25.1.2011	12.4.2011	24.5.2011	21.6.2011
	11.7.2011	31.8.2011	10.10.2011	
<b>Date adopted</b>	11.10.2011			
<b>Result of final vote</b>	+: –: 0:	36 5 1		
<b>Members present for the final vote</b>	Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Ryszard Czarnecki, Spyros Danellis, Philippe De Backer, Luis de Grandes Pascual, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Mathieu Grosch, Dieter-Lebrecht Koch, Jaromír Kohlíček, Georgios Koumoutsakos, Werner Kuhn, Marian-Jean Marinescu, Gesine Meissner, Mike Nattrass, Hubert Pirker, David-Maria Sassoli, Vilja Savisaar-Toomast, Olga Sehnalová, Debora Serracchiani, Brian Simpson, Keith Taylor, Silvia-Adriana Țicău, Thomas Ulmer, Peter van Dalen, Dominique Vlasto, Artur Zasada, Roberts Zile			
<b>Substitute(s) present for the final vote</b>	Isabelle Durant, Michael Gahler, Dominique Riquet, Laurence J.A.J. Stassen, Ramon Tremosa i Balcells			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Jaroslav Paška, Peter Simon			
<b>Date tabled</b>	19.10.2011			