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*Committee on Transport and Tourism*

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**2013/0013(COD)**

18.6.2013

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings (COM(2013)0026 – C7-0026/2013 – 2013/0013(COD))

Committee on Transport and Tourism

Rapporteur: Jaromír Kohlíček

### ***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 regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings (COM(2013)0026 – C7-0026/2013 – 2013/0013(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0026),
  - having regard to Article 294(2) and Articles 91 and 109 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0026/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of ...<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of ...<sup>2</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Employment and Social Affairs (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
  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 regulation**

##### **Recital 2**

*Text proposed by the Commission*

(2) A series of legislative measures has been adopted at European level, opening

*Amendment*

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> Not yet published in the Official Journal.

up the rail freight and international rail passenger markets to competition and establishing, by way of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast), certain fundamental principles which include that railway undertakings shall be managed according to principles that apply to commercial companies, that entities responsible for the allocation of capacity and charging for rail infrastructure shall be separate from entities which operate rail services and that there shall be a separation of accounts, that any railway undertaking licensed in accordance with EU criteria should have access to railway infrastructure on fair, non-discriminatory terms, and that infrastructure managers may benefit from State financing.

up the rail freight and international rail passenger markets to competition and establishing, by way of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast)<sup>1</sup>, certain fundamental principles which include that railway undertakings shall be managed according to principles that apply to commercial companies, that entities responsible for the allocation of capacity and charging for rail infrastructure shall be separate from entities which operate rail services and that there shall be a separation of accounts, that any railway undertaking licensed in accordance with EU criteria should have access to railway infrastructure on fair, non-discriminatory terms, and that infrastructure managers may benefit from State financing. ***The time limit for transposition of Directive 2012/34/EU into national law is 16 June 2015.***

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<sup>1</sup> OJ L 343, 14.12.2012, p. 32.

Or. en

## Amendment 2

### Proposal for a regulation Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) Railway undertakings may, in certain situations, be obliged to make payments which undertakings in other transport modes do not have to make, such as special family allowances, insurance premiums and contributions to pension schemes. In the current economic situation, with the railways being under-financed in many Member States, additional ways of ensuring public***

*financial support to railway undertakings should be maintained. Where the State provides compensation for such payments, this should be done in a non-discriminatory way, extending the right to demand such compensation to all railway undertakings established in the Union which operate with a valid licence and safety certificate.*

Or. en

### **Amendment 3**

#### **Proposal for a regulation Recital 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*(2b) The Member States' insurance and pension schemes for railway undertakings diverge from those applicable to other modes of transport, in that they involve, for example, an obligation on railway undertakings to pay additional social allowances in respect of particular medical treatment or supplementary days of rest or early retirement schemes for workers performing arduous work in the railway sector. Such obligations, deriving from the respective national legislative framework, need to be covered by the provision of public financial support to railway undertakings.*

Or. en

### **Amendment 4**

#### **Proposal for a regulation Recital 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***(2c) The provisions of Directive 2012/34/EU must be transposed by Member States into national law by 2015. Only then will it be possible to assess their effects on the railway sector. Before abandoning the current provisions on the normalisation of accounts, it is useful to assess in greater detail the effects of such a change on the rail system.***

Or. en

## **Amendment 5**

### **Proposal for a regulation Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) Regulation (EEC) No 1192/69 ***is*** inconsistent and incompatible with legislative measures currently ***in force***. In particular, in the context of a liberalised market where railway undertakings ***compete*** directly with the enumerated railway undertakings, it is no longer appropriate to discriminate between ***these two groups of different*** undertakings.

(3) Regulation (EEC) No 1192/69 ***in its current form has continued to provide for a limited source of compensation that is now becoming*** inconsistent and incompatible with ***the new*** legislative measures ***which are*** currently ***being transposed into national law***. In particular, in the context of a liberalised market where railway undertakings ***are competing*** directly with the enumerated railway undertakings, it is no longer appropriate to discriminate between ***different undertakings. Therefore, equal conditions should be created for all railway*** undertakings.

Or. en

## **Amendment 6**

### **Proposal for a regulation Recital 4**



*Text proposed by the Commission*

(4) As a consequence, ***it is appropriate to repeal Regulation (EEC) No 1192/69 to eliminate inconsistencies in the EU legal order and this will contribute to simplification by eliminating a legal act which is now obsolete.***

*Amendment*

(4) As a consequence, ***the possibility should be assessed of extending the same rights to all railway undertakings, in accordance with the new Union legal framework governing the railway sector.***

Or. en

#### **Amendment 7**

##### **Proposal for a regulation Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) In order to ensure a consistent assessment of the situation, the Commission should submit a report evaluating the implementation of Directive 2012/34/EU at least two years after the final date for its transposition. That report should assess whether the abovementioned public financial support is still justified and needed, and whether that support, as granted pursuant to Regulation (EEC) No 1192/69, is no longer provided to railway undertakings. If the report identifies an ongoing need to maintain the specific provisions of Regulation (EEC) No 1192/69, the Commission should assess the need for a proposal amending this Regulation and, possibly, Regulation (EEC) No 1192/69.***

Or. en

#### **Amendment 8**

##### **Proposal for a regulation Article 1 – paragraph 1**

*Text proposed by the Commission*

Regulation (EEC) No 1192/69 is repealed.

*Amendment*

Regulation (EEC) No 1192/69 is repealed  
**as from 31 December 2019.**

***At the latest two years before that date, the Commission shall submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions assessing the development of the rail sector. On the basis of that report, the Commission shall, if appropriate, propose a postponement of the repeal of that Regulation and its amendment, with the aim of laying down common rules for the normalisation of the accounts of all railway undertakings.***

Or. en

## EXPLANATORY STATEMENT

### *The Commission proposal*

In the framework of the Fourth Railway Package the Commission proposes to repeal regulation 1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings. This regulation allows Member States to compensate railway undertakings for the payment of obligations which undertakings of other transport modes, for various reasons, do not have to support.

Those obligations may concern, for example, special payments in case of accidents at work, which a railway undertaking is obliged to make but which in the case of other transport modes is borne by the state, pensions for railway workers who usually retire earlier from certain arduous jobs, or the payments for costs of level crossing facilities. The types of compensation for such obligations are divided into 15 categories ("classes") which define the specific scope and calculation principles, as included in the different annexes to regulation 1192/69.

Regulation 1192/69 was adopted before the rail market was liberalised and when rail transport in Europe was developing primarily within national borders, with integrated companies both operating rail services and managing rail infrastructure. At the time the objective of the Regulation was to put railway undertakings and undertakings active in other transport modes on an equal competitive footing. Moreover the relationship between governments and mostly state owned railway undertakings was not yet regulated by a contractual agreement, and a much more direct link of ownership among the two actors existed. Due to its initial intention the regulation contains a list of enumerated list of the former state-owned railway companies. This list was adapted with every EU enlargement, last in 2007, and today contains 36 companies.

The Commission states that since 2007 four Member States have made use of this regulation: Belgium, Germany, Ireland and Poland. Out of the 15 classes, payments were made in only 3. The Commission is of the opinion that, after several railway packages that transformed the rail sector, the regulation does no longer respect the current legal environment and discriminates between those railway undertakings included in the list (and thereby eligible for compensation payments) and those excluded from the list.

### *The rapporteur's position*

This proposal is aimed at repealing regulation 1192/69, which is why modifying the text of the regulation itself is excluded. Whereas in all the previous railway packages, as proposed by the European Commission and then adopted and transposed by Member States, the aim was to extend rights and obligations to all the rail newcomers and thus to open the rail market, here the Commission proposes to solve the potential discrimination among railway undertakings not by an adequate recast, as in the case of other legislative texts, but by a direct deletion of the act: i.e. by repealing the regulation.

Therefore the legislator has essentially three options:

1. To agree with the Commission's intention and to approve the repeal;
2. To postpone the decision on the repeal and to request the Commission, following a more in-depth analysis, to modify the existing regulation and to adapt it to the current legal framework;
3. To reject the repeal and keep the regulation in force.

Your rapporteur favours option 2. He is of the opinion that before deciding to repeal the regulation it is required to first assess the impact of the provisions of the new Directive 2012/34 on the rail sector which entered into force in November 2012. It is certainly correct, as the Commission states, that the current text of the regulation is discriminatory, as it only offers the possibility for compensation to 36 specific companies. According to the number of railway licences there are more than 1000 railway undertakings active in the EU. Therefore, maintaining the regulation in force unchanged is not an option, as it will allow only a limited number of railway undertakings to ask for such compensations, according to their national rules and legislative framework regarding pension or insurance schemes.

What should be envisaged instead is making those compensations available to all railway undertakings. Most of the provisions of Directive 2012/34 are to be transposed into national law by 16 June 2015: among them, for example, the obligation of developing and implementing accordingly a contractual agreement, with a duration of at least 5 years, on investments on rail infrastructure. Such contracts are not yet in force in all EU Member states, or their duration and conditions are different.

It would be premature to repeal regulation 1192/69 directly. In the current economic climate and against the background of underfinanced railway systems in many Member States it may be necessary to maintain the possibility to compensate railways for certain payments they are required to make by national law and which other transport modes do not have to bear. In order for the effects of the new provisions to become visible it would be more appropriate to wait for some more time and then assess properly the impact of the new legislation in place.

In Directive 2012/34, Article 15 requires the Commission to provide every two years a monitoring report on the state of the rail sector and of the investment, with a general assessment of the implementation of the directive: it is advisable that a similar report is provided to the Council and the European Parliament two years after the deadline for transposition of this Directive. Based on this assessment the legislators could then be informed if in the meantime compensation payments as provided for by regulation 1192/69 have been taken place.

Your rapporteur is concerned about those Member States where rail workers' welfare schemes and acquired rights to early retirement are still borne by Member States budgets according to their national laws. These laws are fully respecting the independence of railway undertakings, which are already acting in a commercial way, and they are as well compatible with the provisions of Article 93 of the Treaty that recognizes specificity to the transport sector.

Therefore your rapporteur proposes to:

1. postpone the final decision on the repeal of regulation 1192/69 until 31.12.2019;
2. request the Commission to assess by way of a report, to be provided at the latest by 31.12.2017, the effects of the transposition of Directive 2012/34 into national law following the deadline of 16 June 2015;
3. ask the Commission, according to the results of the implementation of the transposed Directive 2012/34, to table, if appropriate, a new legislative proposal which grants all railway undertakings the same rights provided now by regulation 1192/69 or to confirm its repeal.

The amendments prepared in this draft report reflect that approach.