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**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council position at first reading with a view to the adoption of a  
directive of the European Parliament and of the Council establishing a single  
European railway area (recast)  
(18581/2/2011 – C7-0268/2010 – 2010/0253(COD))

Committee on Transport and Tourism

Rapporteur: Debora Serracchiani

### ***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 Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council establishing a single European railway area (recast)**

**(18581/2/2011 – C7-0268/2010 – 2010/0253(COD))**

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

*The European Parliament,*

- having regard to the Council position at first reading (18581/2/2011 – C7-0268/2010),
  - 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 Luxembourg Chamber of Deputies, 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>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 28 January 2011<sup>2</sup>,
  - having regard to its position at first reading<sup>3</sup> on the Commission proposal to Parliament and the Council (COM(2010)0475),
  - having regard to Article 294(7) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 66 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A7-0196/2012),
1. Adopts its position at second reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 132, 3.5.2011, p. 99.

<sup>2</sup> OJ C 104, 2.4.2011, p. 53.

<sup>3</sup> Texts adopted of 16.11.2011, P7\_TA(2011)0503.

## Amendment 1

### Council position Recital 15

#### *Council position*

(15) The **accounts** of an infrastructure manager should be balanced over a reasonable time period which, once established, might be exceeded under exceptional circumstances, such as a major and sudden deterioration in the economic situation in a Member State affecting substantially the level of traffic on its infrastructure or the level of available public financing.

#### *Amendment*

(15) The **profit and loss account** of an infrastructure manager should be balanced over a reasonable time period which, once established, might be exceeded under exceptional circumstances, such as a major and sudden deterioration in the economic situation in a Member State affecting substantially the level of traffic on its infrastructure or the level of available public financing. ***In accordance with international accounting rules, the amount of loans to finance infrastructure projects does not appear in such profit and loss accounts.***

## Amendment 2

### Council position Recital 27 a (new)

#### *Council position*

#### *Amendment*

***(27a) Non-discriminatory access to service facilities and supply of rail-related services in these facilities should allow railway undertakings to offer better services to passenger and freight users.***

## Amendment 3

### Council position Recital 33

#### *Council position*

#### *Amendment*

(33) To ensure transparency and non-discriminatory access to rail infrastructure and to services in service facilities for all railway undertakings, all the information required to use access rights should be

(33) To ensure transparency and non-discriminatory access to rail infrastructure and services in service facilities for all railway undertakings, all the information required to use access rights is to be

published in a network statement.

published in a network statement. ***The network statement should be published in at least two official languages of the Union in line with existing international practices.***

*Justification*

*This is a presidency compromise proposal accepted by the EP.*

**Amendment 4**

**Council position**  
**Recital 45 a (new)**

*Council position*

*Amendment*

***(45a) Noise differentiated infrastructure charges should complement other measures to reduce noise produced by rail traffic, such as the adoption of technical specifications for interoperability (TSI) setting maximum levels of noise produced by railway vehicles, noise mapping and action plans to reduce noise exposure under Directive 2002/49/EC as well as Union and national public funding for the retrofitting of rail vehicles and for noise reduction infrastructures.***

**Amendment 5**

**Council position**  
**Recital 45 b (new)**

*Council position*

*Amendment*

***(45b) Noise reduction measures equivalent to those adopted for the rail sector should be considered for other modes of transport.***

## Amendment 6

### Council position Recital 46

#### *Council position*

(46) In order to accelerate the installation of the European Train Control System (ETCS) onboard locomotives, infrastructure managers **may** modify the charging system through a temporary differentiation for trains equipped with ETCS. ***Infrastructure managers should be able to ensure that such a differentiation does not result in a loss of revenue.***

#### *Amendment*

(46) In order to accelerate the installation of the European Train Control System (ETCS) onboard locomotives, infrastructure managers ***should*** modify the charging system through a temporary differentiation for trains equipped with ETCS. ***This differentiation should give appropriate incentives to equip trains with ETCS according to a timeframe consistent with the ERTMS European Deployment Plan established under Commission Decision 2009/561/EC.***

## Amendment 7

### Council position Recital 83 a (new)

#### *Council position*

#### *Amendment*

***(83a) In order to ensure the development of competition, continued investment and the cost-effectiveness of service provision of the railway sector the separation of accounts should require the organisation of distinct divisions within a single undertaking or the management of infrastructure and transport services by separate entities;***

#### *Justification*

*This is the EP's amendment to Art 6.2, transformed into a recital, as proposed by the EP delegation during the trilogue meetings.*

## Amendment 8

### Council position Recital 83 b (new)



*Council position*

*Amendment*

***(83b) When managing the traffic on the network, effective cooperation between railway undertakings and infrastructure managers is essential;***

*Justification*

*This is EP amendment on Art 7.1 transformed into a recital, as proposed by the EP delegation during the trilogue meetings.*

## **Amendment 9**

**Council position**  
**Recital 83 c (new)**

*Council position*

*Amendment*

***(83c) The Commission should 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***

*Justification*

*The EP delegation accepted to transform amendment 61 into a recital.*

## **Amendment 10**

**Council position**  
**Recital 83 f (new)**

*Council position*

*Amendment*

***(83f) When managing the traffic on the network, effective cooperation between railway undertakings and infrastructure managers is essential;***

## **Amendment 11**

**Council position**  
**Recital 83 g (new)**

*Council position*

*Amendment*

***(83g) The Commission should 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 12**

**Council position**  
**Article 2 – paragraph 2 a (new)**

*Council position*

*Amendment*

***2a. Member States may exclude the following from the application of Articles 6, 7, 8 and 13 and Chapter IV:***

***- railway undertakings which only operate rail-freight services on railway infrastructure managed by these undertakings before this Directive enters into force, and which has a gauge different from the dominant network within the Member State, and is connected to a railway infrastructure on the territory of a non-EU State - as long as the managed infrastructure is not identified in Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network.***

*Justification*

*This is an amendment from Parliament's first reading.*

## Amendment 13

### Council position Article 3 – point 2

#### *Council position*

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

#### *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, ***in compliance with applicable safety rules;*** the ***essential*** functions of the 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;***

#### *Justification*

*This is an amendment from Parliament's first reading.*

## Amendment 14

### Council position Article 3 – point 10 a (new)

#### *Council position*

#### *Amendment*

***'heavy maintenance' means work that is not carried out routinely as part of day-to-day operations and requires the vehicle to be removed from service.***

#### *Justification*

*EP compromise proposal related to Art 13 and Annex II*

## Amendment 15

### Council position Article 3 – point 14

#### *Council position*

(14) 'contractual agreement' means an agreement or, mutatis mutandis, an arrangement within the framework of administrative **or regulatory** measures;

#### *Amendment*

(14) 'contractual agreement' means an agreement or, mutatis mutandis, an arrangement within the framework of administrative measures;

#### *Justification*

*This amendment reflects Council Presidency compromise proposal presented at the ongoing negotiations.*

## Amendment 16

### Council position Article 3 – point 26 a (new)

#### *Council position*

#### *Amendment*

***(26a) 'alternative route' means another route between the same origin and destination where there is substitutability between the two routes for the operation of the freight or passenger service concerned by the railway undertaking;***

#### *Justification*

*This is a useful additional definition regarding the term 'alternative route' which is used in Article 13.*

## Amendment 17

### Council position Article 3 – point 26 b (new)

#### *Council position*

#### *Amendment*

***(26b) 'viable alternative' means access to another service facility which is economically acceptable to the railway undertaking, and allows it to operate the***

*freight or passenger service concerned;*

*Justification*

*This is a useful additional definition regarding the term 'viable alternative' which is used in Article 13*

**Amendment 18**

**Council position**

**Article 4 – paragraph 2 a (new)**

*Council position*

*Amendment*

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

*Justification*

*This is an amendment from Parliament's first reading.*

**Amendment 19**

**Council position**

**Article 4 – paragraph 2 b (new)**

*Council position*

*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*

*This is an amendment from Parliament's first reading.*

## Amendment 20

### Council position

#### Article 5 – paragraph 3 a (new)

*Council position*

*Amendment*

***3a. Without prejudice to paragraph 3, shareholders of publicly owned or controlled railway undertakings shall be able to require their own prior approval for major business management decisions in the same way as shareholders of private joint-stock companies under the rules of the company law of Member States can. The provisions of this Article shall be without prejudice to the powers of supervisory bodies under this company law relating to the appointment of board members.***

## Amendment 21

### Council position

#### Article 6 – title

*Council position*

*Amendment*

Separation of accounts

***Transparent*** separation of accounts

*Justification*

*This is an amendment from Parliament's first reading.*

## Amendment 22

### Council position

#### Article 6 – paragraph 2

*Council position*

*Amendment*

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

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.

separate entities *in order to ensure the development of competition, continued investment and the cost-effectiveness of service provision of the railway sector.*

*Justification*

*This is an amendment from Parliament's first reading.*

**Amendment 23**

**Council position**

**Article 6 – paragraph 4**

*Council position*

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

*Amendment*

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 *and the monitoring of the use of income from infrastructure charges and surpluses from other commercial activities.*

**Amendment 24**

**Council position**

**Article 8 – paragraph 1**

*Council position*

1. Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union, including the need to cooperate with neighbouring third countries. For this purpose, they shall publish *by* [two years after the entry into force of this Directive] an indicative rail infrastructure development strategy with a view to meeting future mobility needs in terms of maintenance, renewal and development of the infrastructure based on sustainable financing of the railway

*Amendment*

1. Member States shall develop their national railway infrastructure by taking into account, where necessary, the general needs of the Union, including the need to cooperate with neighbouring third countries. For this purpose, they shall publish *at the latest* two years after the entry into force of this Directive, *after consultation with interested parties*, an indicative rail infrastructure development strategy with a view to meeting future mobility needs in terms of maintenance, renewal and development of

system. The strategy shall cover a period of at least five years and be renewable.

the infrastructure based on sustainable financing of the railway system. The strategy shall cover a period of at least five years and be renewable.

*Justification*

*This is a Presidency compromise proposal, accepted by the EP.*

**Amendment 25**

**Council position**

**Article 8 – paragraph 2**

*Council position*

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 *functions as referred to in point (2) of Article 3*, the size of the infrastructure and financial requirements, in particular in order to cover new investments. *Member States may decide to finance those investments through means other than direct State funding.*

*Amendment*

**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.

*Justification*

*This is an amendment from Parliament's first reading.*

**Amendment 26**

**Council position**

**Article 8 – paragraph 4 - subparagraph 1**

*Council position*

4. Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed *the period of the contractual agreement referred to in Article 30(2)*, the *accounts* of an infrastructure manager shall at least

*Amendment*

Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed *five years*, the *profit and loss account* of an infrastructure manager shall at least balance income from infrastructure



balance income from infrastructure charges, surpluses from other commercial activities and State **and private** funding on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, **including for long-term asset renewals and enhancements** on the other hand.

charges, surpluses from other commercial activities, **non refundable incomes from private sources** and State funding on the one hand, including advance payments from the State, where appropriate, and infrastructure expenditure, on the other hand.

## Amendment 27

### Council position

#### Article 10 – paragraph 4

##### *Council position*

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **working group** referred to in Article 57(1) the Commission **may** adopt measures setting out the details of the procedure and criteria to be followed for the application of paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Amendment*

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **network** referred to in Article 57(1), the Commission **shall, within 18 months after the deadline for transposition set out in Article 64(1),** adopt measures setting out the details of the procedure and criteria to be followed for the application of paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Justification*

. *This is a compromise accepted by the EP.*

## Amendment 28

### Council position

#### Article 11 – paragraph 2 – subparagraph 2

##### *Council position*

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

##### *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 a pre-determined, reasonable time, and, in any case, within **two months** of receipt of **all relevant information**.

body shall consider the information provided **by these parties, and, as appropriate shall ask for any relevant additional information and initiate consultation with all relevant parties within one month from the receipt of the request. The regulatory body shall consult** 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 **ten weeks** of receipt of **the request**.

#### *Justification*

*This presidency compromise proposal is considered acceptable in connection with the new wording of Art 56.6.*

### **Amendment 29**

#### **Council position**

#### **Article 11 – paragraph 4**

##### *Council position*

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **working group** referred to in Article 57(1) the Commission **may** adopt 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 implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Amendment*

4. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **network** referred to in Article 57(1), the Commission **shall, within 18 months after the deadline for transposition set out in Article 64(1),** adopt 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 implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

#### *Justification*

*This is a compromise accepted by the EP.*

## Amendment 30

### Council position

#### Article 12 – paragraph 5

##### *Council position*

5. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **working group** referred to in Article 57(1), the Commission **may** adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Amendment*

5. Based on the experience of regulatory bodies, competent authorities and railway undertakings and based on the activities of the **network** referred to in Article 57(1), the Commission **shall** adopt measures setting out the details of the procedure and criteria to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Justification*

*This amendment reflects Council Presidency compromise proposal presented at the ongoing negotiations.*

## Amendment 31

### Council position

#### Article 13 – paragraph 2

##### *Council position*

2. Operators of service facilities shall supply to railway undertakings **the services** referred to in **point 2 of Annex II**, in a non-discriminatory manner.

##### *Amendment*

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.

##### *Justification*

*This amendment reflects Council Presidency compromise proposal presented at the ongoing negotiations.*

## Amendment 32

## Council position

### Article 13 – paragraph 3 – subparagraph 1

#### *Council position*

To guarantee full transparency and non-discrimination of access to the service facilities referred to in point 2 (a), (b), (c) and **(g)** of Annex II, and the supply of services in these facilities where the operator of such a service facility is under direct or indirect control of a body or firm which is also active and holds a dominant position in national railway transport services markets for which the facility is used, the operators of these service facilities shall be organised in such a way that they are independent of this body or firm in organisational and decision-making terms. Such independence shall not entail the establishment of a separate **body or firm** for service facilities and may be fulfilled with the organisation of distinct divisions within a single **undertaking**.

#### *Amendment*

To guarantee full transparency and non-discrimination of access to the service facilities referred to in point 2 (a), (b), (c), **(d)**, **(f)** and **(h)** of Annex II, and the supply of services in these facilities where the operator of such a service facility is under direct or indirect control of a body or firm which is also active and holds a dominant position in national railway transport services markets for which the facility is used, the operators of these service facilities shall be organised in such a way that they are independent of this body or firm in organisational and decision-making terms. Such independence shall not entail the requirement of the establishment of a separate **legal entity** for service facilities and may be fulfilled with the organisation of distinct divisions within a single **legal entity**.

## Amendment 33

## Council position

### Article 13 – paragraph 4

#### *Council position*

4. Requests by railway undertakings for access to, and supply of services in the service facility may only be **refused** if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same **or alternative** routes under economically acceptable conditions. This shall not oblige the operator of the service facility to make investments in resources or facilities in order to accommodate all requests by railway undertakings.

#### *Amendment*

4. Requests by railway undertakings for access to, and supply of services in the service facility **shall be answered within a reasonable time limit set by the regulatory body referred to in Article 55. Such requests** may only be **rejected** if there are viable alternatives allowing them to operate the freight or passenger service concerned on the same routes under economically acceptable conditions. This shall not oblige the operator of the service facility to make investments in resources or facilities in order to accommodate all

Where requests by railway undertakings concern access to, and supply of services in a service facility managed by an operator of the service facility referred to in paragraph 3, the operator of the service facility shall justify any decision *of refusal* and indicate viable alternatives in other facilities.

requests by railway undertakings.

Where requests by railway undertakings concern access to, and supply of services in a service facility managed by an operator of the service facility referred to in paragraph 3, the operator of the service facility shall *in written form* justify any *negative* decision and indicate viable alternatives in other facilities.

#### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

### **Amendment 34**

#### **Council position**

##### **Article 13 – paragraph 6**

#### *Council position*

6. Where a service facility referred to in point 2 of Annex II has not been in use for at least *three* consecutive years and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

#### *Amendment*

6. Where a service facility referred to in point 2 of Annex II has not been in use for at least *two* consecutive years and interest by railway undertakings for access to this facility has been expressed to the operator of that service facility on the basis of demonstrated needs, its owner shall publicise the operation of the facility as being for lease or rent as a rail service facility, as a whole or in part, unless the operator of that service facility demonstrates that an ongoing process of reconversion prevents its use by any railway undertaking.

### **Amendment 35**

#### **Council position**

##### **Article 15 – paragraph 2**

#### *Council position*

2. In this context, the Commission shall closely involve representatives of the

#### *Amendment*

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 better able 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.

Member States, ***including representatives of the regulatory bodies referred to in Article 55***, and of the sectors concerned in its work, including, ***where appropriate, the railways sector's social partners, users and local and regional authority representatives***, so that they are better able 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. ***Where appropriate, the Commission shall also involve the European Railway Agency, in accordance with its functions as provided for in Regulation (EC) 881/2004.***

#### *Justification*

*This is a presidency compromise proposal accepted by the EP.*

#### **Amendment 36**

##### **Council position**

##### **Article 15 – paragraph 3**

###### *Council position*

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, 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.

###### *Amendment*

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 made 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 and harmonisation between Member States and the development of employment and the related-social conditions in the rail sector. These monitoring activities are without prejudice to similar activities existing in Member States and to the role of social partners.***

### *Justification*

*This is a Council compromise proposal accepted by the EP. The Council accepted the Parliament's wishes to also collect information on the development of employment and social conditions in the railway sector.*

#### **Amendment 37**

##### **Council position**

##### **Article 15 – paragraph 4 – point a**

###### *Council position*

(a) the evolution of the internal market in rail services;

###### *Amendment*

(a) the evolution of the internal market in rail services ***and services to be supplied to railway undertakings, as referred to in Annex II;***

### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

#### **Amendment 38**

##### **Council position**

##### **Article 15 – paragraph 4 – point b**

###### *Council position*

(b) the framework conditions, including for public passenger transport services by rail;

###### *Amendment*

(b) the framework conditions ***referred to in paragraph 3,*** including for public passenger transport services by rail;

### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

#### **Amendment 39**

##### **Council position**

##### **Article 15 – paragraph 5**

*Council position*

5. For the purposes of the market monitoring by the Commission, Member States shall supply to the Commission on an annual basis the necessary information on the use of the networks and the evolution of framework conditions in the rail sector.

*Amendment*

5. For the purposes of the market monitoring by the Commission, Member States shall, ***while respecting the role of the social partners***, supply to the Commission on an annual basis the necessary information on the use of the networks and the evolution of framework conditions in the rail sector.

*Justification*

*This is a Council compromise proposal accepted by the EP. The Council accepted to take into account the role of social partners.*

**Amendment 40**

**Council position**

**Article 17 – paragraph 1**

*Council position*

1. A railway undertaking shall be entitled to apply for a licence in the Member State in which it is established.

*Amendment*

1. A railway undertaking shall be entitled to apply for a licence in the Member State in which it is established.

***In the Member States which border third countries, with the network whose track gauge is different from the main rail network within the Union and whose rail freight markets are dominated by the rail freight carriages to and from third countries, the licensing authorities when making decisions on the issue of licences to railway undertakings which are directly or indirectly effectively controlled through the ownership shares of third countries or nationals of third countries, may take into account the existence or non-existence of reciprocal access for Union rail undertakings to the rail freight market of the respective third country.***

*Justification*

*This is an ECR proposal, dealing with the question of foreign ownership of railway*



*undertakings.*

## **Amendment 41**

### **Council position**

#### **Article 17 – paragraph 5**

##### *Council position*

5. The Commission **may** adopt measures setting out the details for the use of a common template for the licence and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Amendment*

5. The Commission **shall** adopt measures setting out the details for the use of a common template for the licence and, if needed to ensure fair and efficient competition in rail transport markets, details on the procedure to be followed for the application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Justification*

*This is a presidency compromise proposal accepted by the EP.*

## **Amendment 42**

### **Council position**

#### **Article 22**

##### *Council position*

Without prejudice to the Union rules on State aids and in accordance with Articles 93, 107 and 108 of the Treaty, a railway undertaking shall be adequately insured or have guarantees under market conditions for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties.

##### *Amendment*

Without prejudice to the Union rules on State aids and in accordance with Articles 93, 107 and 108 of the Treaty, a railway undertaking shall be adequately insured or have **adequate** guarantees under market conditions for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of passengers, luggage, freight, mail and third parties. ***Notwithstanding this obligation, the specificities and the risk-profile of different types of services, in particular of railway operations for cultural or heritage purposes, may be taken into account.***

### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

#### **Amendment 43**

##### **Council position**

##### **Article 30 – paragraph 2 – subparagraph 1**

###### *Council position*

Without prejudice to their competence regarding railway infrastructure planning and financing, and to the budgetary principle of annuality, where applicable, Member States shall ensure that a contractual agreement, fulfilling the basic principles and parameters set out in Annex V, is concluded between the competent authority and the infrastructure manager covering a period of not less than **three years**.

###### *Amendment*

Without prejudice to their competence regarding railway infrastructure planning and financing, and to the budgetary principle of annuality, where applicable, Member States shall ensure that a contractual agreement, fulfilling the basic principles and parameters set out in Annex V, is concluded between the competent authority and the infrastructure manager covering a period of not less than **five years**.

### *Justification*

*This is a Council compromise proposal accepted by the EP. The Council moved away from the minimum duration of three years for the contractual agreement. A minimum duration of five years is acceptable as it gives the necessary stability for the railway sector as regards the development of rail infrastructure.*

#### **Amendment 44**

##### **Council position**

##### **Article 30 – paragraph 2 – subparagraph 2**

###### *Council position*

Member States shall ensure that contractual agreements in force on....\* are modified to align them with this Directive upon their renewal, or at the latest by....\*\*.

---

\* OJ: Please insert date- **three years** after the entry into force of this Directive.

###### *Amendment*

Member States shall ensure that contractual agreements in force on....\* are modified, **if necessary**, to align them with this Directive upon their renewal, or at the latest by....\*\*.

---

\* OJ: Please insert date- **two years** after the entry into force of this Directive.

## Amendment 45

### Council position

#### Article 30 – paragraph 3

##### *Council position*

Member States shall implement the incentives referred to in paragraph 1 through the contractual agreement referred to in paragraph 2 ***or through regulatory measures or through a combination of incentives to reduce costs in the contractual agreement and the level of charges through regulatory measures.***

##### *Amendment*

Member States shall implement the incentives referred to in paragraph 1 through the contractual agreement referred to in paragraph 2.

## Amendment 46

### Council position

#### Article 30 – paragraph 4

##### *Council position*

***If a Member State decides to implement the incentives referred to in paragraph 1 through regulatory measures, this shall be based on an analysis of the achievable cost reductions. This shall be without prejudice to the powers of the regulatory body to review charges referred to in Article 56.***

##### *Amendment*

***deleted***

## Amendment 47

### Council position

#### Article 30 – paragraph 8

##### *Council position*

Infrastructure managers shall establish a method for apportioning costs. ***Member States may require prior approval. That method shall be updated from time to time on the basis of the best international***

##### *Amendment*

Infrastructure managers shall establish a method for apportioning costs ***to the different categories of services offered to railway undertakings.***

*practice.*

### *Justification*

*This amendment reflects Council Presidency compromise proposal presented at the ongoing negotiations.*

## **Amendment 48**

### **Council position**

#### **Article 31 – paragraph 2**

##### *Council position*

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 in order to allow the regulatory body to perform its functions as referred to in Article 56. The infrastructure manager and the service facility operator ***shall***, in this regard, be able to demonstrate 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.

##### *Amendment*

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 in order to allow the regulatory body to perform its tasks as referred to in Article 56. The infrastructure manager and the service facility operator ***must***, in this regard, be able to demonstrate ***to railway undertakings*** 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.

## **Amendment 49**

### **Council position**

#### **Article 31 – paragraph 3 – subparagraph 2**

##### *Council position*

Before ...\*, the Commission shall adopt measures setting out the methodology for the calculation of the cost that is directly incurred as a result of operating the train. Those ***implementing*** acts shall be adopted in accordance with the ***examination*** procedure referred to in ***Article 62(3)***.

##### *Amendment*

Before ***the deadline for transposition set out in Article 64(1)***, the Commission shall adopt measures setting out the methodology for the calculation of the cost that is directly incurred as a result of operating the train. Those ***delegated*** acts shall be adopted in accordance with the procedure referred to in ***Article 60***.

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***\*OJ: Please insert date - 36 months after the entry into force of this Directive.***

*Justification*

*The EP requests that the development of the methodology for the calculation of direct costs be done through delegated acts.*

**Amendment 50**

**Council position**

**Article 31 – paragraph 3 – subparagraph 3**

*Council position*

The infrastructure manager may decide to gradually adapt to this methodology referred to in paragraph 4 during a period of no more than **five years** after... \*.

***\* OJ: Please insert the date - 36 months after the entry into force of this Directive***

*Amendment*

The infrastructure manager may decide to gradually adapt to this methodology referred to in paragraph 4 during a period of no more than **two years** after **the deadline for transposition set out in Article 64(1)**.

*Justification*

*Two years are considered sufficient for the infrastructure manager to adapt to the new calculation of direct costs.*

**Amendment 51**

**Council position**

**Article 31 – paragraph 5 – subparagraph 2**

*Council position*

Based on the experience gained by infrastructure managers, railway undertakings, regulatory bodies and competent authorities, and recognising existing schemes on noise differentiation, the Commission **may** adopt implementing measures setting out the **detailed arrangements** to be followed for the application of the charging for the cost of noise effects including its duration of

*Amendment*

Based on the experience gained by infrastructure managers, railway undertakings, regulatory bodies and competent authorities, and recognising existing schemes on noise differentiation, the Commission **shall** adopt measures setting out the **modalities** to be followed for the application of the charging for the cost of noise effects including its duration of application and enabling the

application and enabling the differentiation of infrastructure charges to take into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of population affected and the train composition with an impact on the level of noise emissions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

differentiation of infrastructure charges to take into account, where appropriate, the sensitivity of the area affected, in particular in terms of the size of population affected and the train composition with an impact on the level of noise emissions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

***Those implementing measures shall not result in undue distortion of competition between railway undertakings and shall not affect the overall competitiveness of the rail sector.***

***Any such modification of infrastructure charges to take account of the cost of noise effects shall support the retrofitting of wagons with the most economically viable low-noise braking technology available.***

## Amendment 52

### Council position

#### Article 32 – paragraph 1 – subparagraph 1

##### *Council position*

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 services.*** The charging system shall respect the productivity increases achieved by railway undertakings.

##### *Amendment*

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 rail market segments.*** The charging system shall respect the productivity increases achieved by railway undertakings.

##### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

## Amendment 53

### Council position

#### Article 32 – paragraph 1 – subparagraph 6

##### *Council position*

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

##### *Amendment*

The list of market segments shall be published in the network statement and shall be reviewed at least every five years.  
***The regulatory body referred to in Article 55 shall control that list in accordance with Article 56.***

##### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

## Amendment 54

### Council position

#### Article 32 – paragraph 4 – subparagraph 1

##### *Council position*

The infrastructure charges ***may*** be differentiated to give incentives to equip trains with the European Train Control System (ETCS) compliant with the version adopted by the Commission Decision 2008/386/EC and successive versions.

##### *Amendment*

The infrastructure charges ***for the use of railway corridors which are specified in Commission Decision 2009/561/EC shall*** be differentiated to give incentives to equip trains with the European Train Control System (ECTS) compliant with the version adopted by the Commission Decision 2008/386/EC and successive versions.  
***Such differentiation shall not result in any overall change in revenue for the infrastructure manager.***

***Notwithstanding this obligation, Member States may decide that this differentiation of infrastructure charges does not apply to railway lines specified in Commission Decision 2009/561/EC on which only ETCS equipped trains may run.***

***Member States may decide to extend this differentiation to railway lines not specified in Commission Decision***

## Amendment 55

### Council position

#### Article 32 – paragraph 4 – subparagraph 2

##### *Council position*

Following an impact assessment, the Commission *may* adopt measures setting out the *detailed arrangements* to be followed *for* the application of the differentiation of the infrastructure charge including its duration of application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Amendment*

***Before the deadline for transposition set out in Article 64(1) and*** following an impact assessment, the Commission ***shall*** adopt ***implementing*** measures setting out the ***modalities*** to be followed ***in*** the application of the differentiation of the infrastructure charge ***to ensure that it does not result in a loss of revenue for infrastructure managers***. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3). ***Those implementing measures shall not result in undue distortion of competition between railway undertakings and shall not affect the overall competitiveness of the rail sector.***

## Amendment 56

### Council position

#### Article 36 – paragraph 1

##### *Council position*

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. ***That*** charge shall provide incentives for efficient use of capacity. Payments for this charge shall be made by either the applicant or the railway undertaking appointed in accordance with Article 41(1).

##### *Amendment*

Infrastructure managers may levy an appropriate charge for capacity that is allocated but not used. ***This non-usage*** charge shall provide incentives for efficient use of capacity. ***The levy of such a charge on applicants that were allocated a train path shall be mandatory in the event of their regular failure to use allocated paths or part of them. For the imposition of this charge, the infrastructure managers shall publish in their network statement the criteria to determine such failure to use.***



***The regulatory body referred to in Article 55 shall control such criteria in accordance with Article 56.*** Payments for this charge shall be made either by the applicant or by the railway undertaking appointed in accordance with Article 41(1).

*Justification*

*This amendment reflects Council Presidency compromise proposal presented at the ongoing negotiations.*

**Amendment 57**

**Council position**

**Article 40 – paragraph 1 – subparagraph 2**

*Council position*

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 **law** on rail freight oriented networks. Appropriate representatives of infrastructure managers from third countries may be associated with these procedures.

*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 **law** on rail freight oriented networks. ***The principles and criteria for capacity allocation established under this cooperation shall be published by infrastructure managers in their network statement in accordance with Annex VI, paragraph 3.*** Appropriate representatives of infrastructure managers from third countries may be associated with these procedures

*Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

## Amendment 58

### Council position

#### Article 47 – paragraph 4 – subparagraph 2

##### *Council position*

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 ***national and international*** 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.

##### *Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

## Amendment 59

### Council position

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

##### *Council position*

##### *Amendment*

***(4a) 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 is an amendment from Parliament's first reading.*

## Amendment 60

### Council position

#### Article 55 – paragraph 3 – subparagraph 1

##### *Council position*

*Member States shall ensure that the regulatory body is staffed and managed in a way that guarantees its independence. They shall in particular ensure that the persons in charge of decisions to be taken by the regulatory body in accordance with Article 56, such as members of its executive board, where relevant, act independently from any market interest related to the railway sector, and shall therefore not have any interest or business relationship with any of the regulated undertakings or entities, and do not seek or take instructions from any government or other public or private entity when carrying out the functions of the regulatory body.*

##### *Amendment*

*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.*

##### *Justification*

*This is an amendment from Parliament's first reading.*

## **Amendment 61**

### **Council position**

#### **Article 55 – paragraph 3 – subparagraph 2**

##### *Council position*

***The persons in charge of decisions to be taken by the regulatory body in accordance with Article 56*** shall have full authority over the recruitment and management of the staff of the regulatory body.

##### *Amendment*

***They*** shall have full authority over the recruitment and management of the staff of the regulatory body.

##### *Justification*

*This amendment re-establishes the text from the original Commission proposal.*

## **Amendment 62**

### **Council position**

#### **Article 56 – paragraph 2 – subparagraph 2 (new)**

##### *Council position*

##### *Amendment*

***The regulatory body shall also cooperate closely with the national safety authority within the meaning of Directive 2008/57/EC, and the licensing authority within the meaning of this Directive.***

***Member States shall ensure that these authorities jointly develop a framework for information-sharing and cooperation aimed at preventing adverse effects on competition or safety in the railway market. This framework shall include a mechanism for the regulatory body to provide the national safety and licensing authorities with non-binding recommendations on issues that may affect competition in the railway market and for the national safety authority to provide the regulatory body and licensing authority with non-binding recommendations on issues that may affect safety.***

*Without prejudice to the independence of each authority within the field of their respective competences, the relevant authority shall examine any such recommendation and give justifications if it intends to deviate from these recommendations before adopting its decisions.*

*Justification*

*This the EP compromise proposal based on the Council's compromise proposal.*

**Amendment 63**

**Council position**

**Article 56 – paragraph 4**

*Council position*

4. The regulatory body shall have the necessary organisational capacity to carry out its functions.

*Amendment*

4. The regulatory body shall have the necessary organisational capacity ***in terms of human and material resources, which shall be proportionate to the importance of the rail sector in the Member State.***

*Justification*

*This is a presidency compromise proposal which is accepted by the EP.*

**Amendment 64**

**Council position**

**Article 56 – paragraph 5 a (new)**

*Council position*

*Amendment*

***5a. The regulatory body shall regularly, and in any case at least every two years, consult representatives of users of the rail freight and passenger transport services, to take into account their views on the rail market.***

*Justification*

*This is a presidency compromise proposal which is accepted by the EP.*

## Amendment 65

### Council position

#### Article 56 – paragraph 5 b (new)

##### *Council position*

##### *Amendment*

***5b. 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.***

##### *Justification*

*This is an amendment from Parliament's first reading.*

## Amendment 66

### Council position

#### Article 56 – paragraph 6

##### *Council position*

##### *Amendment*

6. The regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned.

Information requested shall be supplied without undue delay. The regulatory body shall be enabled to enforce such requests with the appropriate sanctions, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework

***6. In the exercise of all of its tasks, the regulatory body shall have the power to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned.***

Information requested shall be supplied without undue delay ***and in any case within a period set by the regulatory body that shall not exceed one month.*** The regulatory body shall be enabled to enforce such requests with the appropriate sanctions, including fines. Information to

of its appeal function and in its function of monitoring the competition in the rail services markets in accordance with paragraph 2. This includes data which are necessary for statistical and market observation purposes.

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 the competition in the rail services markets in accordance with paragraph 2. This includes data which are necessary for statistical and market observation purposes.

### *Justification*

*This a compromise proposal on the complaint procedure which the regulatory body has to follow, to be seen in connection with the changes proposed to Art 56.7.*

## **Amendment 67**

### **Council position**

#### **Article 56 – paragraph 7 – subparagraph 1**

##### *Council position*

7. The regulatory body shall be required to decide on any complaints and take action to remedy the situation within ***a maximum period of two months from receipt of all information.***

Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct undesirable developments in these markets, in particular with reference to points (a) to (g) of paragraph 1.

##### *Amendment*

7. The regulatory body shall consider any complaints and, ***as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints,*** take action to remedy the situation ***and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within ten weeks of receipt of the complaint.***

Without prejudice to the competences of the national competition authorities for securing competition in the rail service markets the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discriminations ***against applicants, market distortions and any other undesirable developments*** in these markets, in particular with reference to points (a) to (g) of paragraph 1.

### *Justification*

*This is a presidency compromise proposal which is supported by the rapporteur.*

#### **Amendment 68**

##### **Council position**

##### **Article 57 – paragraph 1**

###### *Council position*

1. The 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 participate and work together in a ***working group*** that convenes at regular intervals. ***To ensure active cooperation between the appropriate regulatory bodies, the Commission shall support them in this task.***

###### *Amendment*

1. The 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 participate and work together in a ***network*** that convenes at regular intervals. ***The Commission shall be a member, coordinate and support the work of the network and make recommendations to the network, as appropriate. It shall ensure active cooperation of the appropriate regulatory bodies.***

### *Justification*

*This a presidency compromise proposal further modified (deletion of: non-binding)*

#### **Amendment 69**

##### **Council position**

##### **Article 57 – paragraph 1 a (new)**

###### *Council position*

###### *Amendment*

***1a. Subject to the rules on data protection provided for in Directive 95/46 and Regulation 45/2001, the Commission shall support the exchange of the information referred to in paragraph 1 among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets supplied by the relevant undertakings.***



## Amendment 70

### Council position

#### Article 57 – paragraph 3

##### *Council position*

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.

##### *Amendment*

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, ***where appropriate, the Commission, and shall*** request from the regulatory bodies concerned all necessary information before taking its decision.

## Amendment 71

### Council position

#### Article 57 – paragraph 6 a (new)

##### *Council position*

##### *Amendment*

***6a. At the request of a regulatory body, the Commission may participate in the activities listed under paragraphs 2 to 6 for the purpose of facilitating the cooperation of regulatory bodies as outlined in the those paragraphs.***

##### *Justification*

*This is a Council compromise proposal accepted by the EP as it takes up a similar amendment made the EP in first reading.*

## Amendment 72

### Council position

#### Article 57 – paragraph 7

##### *Council position*

7. Regulatory bodies shall develop common principles and practices for making decisions for which they are empowered under this Directive. Based on the experience of regulatory bodies and on the activities of the **working group** referred to in paragraph 1, and if needed to ensure efficient cooperation of regulatory bodies, the Commission may adopt measures setting out such common principles and practices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

##### *Amendment*

7. Regulatory bodies shall develop common principles and practices for making decisions for which they are empowered under this Directive. Based on the experience of regulatory bodies and on the activities of the **network** referred to in paragraph 1, and if needed to ensure efficient cooperation of regulatory bodies, the Commission may adopt measures setting out such common principles and practices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 62(3).

## Amendment 73

### Council position

#### Article 60 – paragraph 2

##### *Council position*

2. The delegation of power referred to in Articles **20, 35 (3), 43 (2) and 56 (11)** shall be conferred on the Commission for a period of five years from..... 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.

##### *Amendment*

2. The delegation of power referred to in Articles ... shall be conferred on the Commission for a period of five years from..... 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.

##### *Justification*

*The Articles referred to in this paragraph are still under negotiation.*

## **Amendment 74**

### **Council position**

#### **Article 60 – paragraph 3**

##### *Council position*

3. The delegation of powers referred to in Articles **20, 35 (3), 43 (2) and 56 (11)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.

##### *Amendment*

3. The delegation of powers referred to in Articles ... may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.

##### *Justification*

*The Articles referred to in this paragraph are still under negotiation.*

## **Amendment 75**

### **Council position**

#### **Article 60 – paragraph 5**

##### *Council position*

5. A delegated act adopted pursuant to Articles **20, 35 (3), 43 (2) and 56 (11)** 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 two months at the initiative of the European Parliament or of the Council.

##### *Amendment*

5. A delegated act adopted pursuant to Articles ... 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 two months at the initiative of the European Parliament or of the Council.

### *Justification*

*The Articles referred to in this paragraph are still under negotiation.*

#### **Amendment 76**

##### **Council position Article 61**

###### *Council position*

At the request of a Member State or on its own initiative the Commission shall examine specific measures adopted by national authorities in relation to the application of this Directive, concerning the conditions of access to railway infrastructure and services, the licensing of railway undertakings, infrastructure charging and capacity allocation within 12 months after adoption of those measures. The Commission shall decide in accordance with the procedure referred to in Article 62(2) whether the related measure may continue to be applied within four months of receipt of such a request.

###### *Amendment*

At the request of a Member State, **a regulatory body**, or on its own initiative the Commission shall examine specific measures adopted by national authorities in relation to the application of the provisions of this Directive concerning the conditions of access to railway infrastructure and services, the licensing of railway undertakings, infrastructure charging and capacity allocation within twelve months after adoption of those measures. The Commission shall decide in accordance with the procedure referred to in Article 62(2) whether the related measure may continue to be applied within four months of receipt of such a request.

#### **Amendment 77**

##### **Council position Article 62 – paragraph 3**

###### *Council position*

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. ***When the committee delivers no opinion, the Commission shall not adopt the draft implementing act.***

###### *Amendment*

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

### *Justification*

*This is an amendment from Parliament's first reading.*

## Amendment 78

### Council position Article 63

#### *Council position*

By 31 December 2012 at the latest, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of Chapter II.

This report shall also assess the development of the market, including the state of preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). ***In its report*** the Commission shall, if appropriate, propose ***complementary*** legislative measures ***to facilitate any such opening***, and shall assess the impact of any such measures.

#### *Amendment*

By 31 December 2012 at the latest, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the implementation of Chapter II.

This report shall also assess the development of the market, including the state of preparation of a further opening-up of the rail market. In its report the Commission shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission shall take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). The Commission shall, if appropriate, propose legislative measures ***in relation to the opening of the domestic rail passenger market and to develop appropriate conditions to ensure non-discriminatory access to the infrastructure, building on the existing separation requirements between infrastructure management and transport operations***, and shall assess the impact of any such measures.

## Amendment 79

### Council position Article 63 a (new)

#### *Council position*

#### *Amendment*

***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, submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions a report on the cooperation between regulatory bodies. The Commission shall, if appropriate, propose complementary measures to ensure a more integrated regulatory oversight of the European rail market, especially for supervisory and arbitration functions in particular for international services. To that aim, legislative measures shall also be considered, if appropriate.*

## **Amendment 80**

### **Council position**

#### **Article 64 – paragraph 1**

##### *Council position*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive including as regards compliance by undertakings, operators, applicants, authorities and other entities concerned by ...\*. They shall forthwith communicate to the Commission the text of those provisions.

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\* OJ: Please insert date - **36 months** from the entry into force of this Directive

##### *Amendment*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive including as regards compliance by undertakings, operators, applicants, authorities and other entities concerned by ...\*. They shall forthwith communicate to the Commission the text of those provisions.

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\* OJ: Please insert date - **12 months** from the entry into force of this Directive

##### *Justification*

*This amendment replaces the former EP text but keeps the deadline of 12 months for transposition which the EP insists on.*

## Amendment 81

### Council position

#### Article 64 – paragraph 2 – subparagraph 2

*Council position*

*Amendment*

*Article 55(1) shall apply from .... \**

*deleted*

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*\*OJ: please insert date- 60 months after the entry into force of this Directive.*

*Justification*

*This Council amendment does not reflect the views of the Parliament.*

## Amendment 82

### Council position

#### Annex I – indent 6

*Council position*

*Amendment*

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

- Access way for passengers and goods, including access *for foot passengers and* by road;

*Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

## Amendment 83

### Council position

#### Annex II – paragraph 2 – point a

*Council position*

*Amendment*

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

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

*Justification*

*This is an amendment from Parliament's first reading.*

**Amendment 84**

**Council position**

**Annex II – paragraph 2 – point e**

*Council position*

(e) maintenance facilities, with the exception of heavy maintenance *services supplied in maintenance* facilities *exclusively* dedicated to *specific* types of rolling stock, *and* other technical facilities, including cleaning and washing facilities;

*Amendment*

(e) maintenance facilities, with the exception of heavy maintenance facilities dedicated to *high-speed trains or to other* types of rolling stock *requiring specific facilities*;

(*ea*) other technical facilities, including cleaning and washing facilities;

**Amendment 85**

**Council position**

**Annex II – paragraph 3 – point a**

*Council position*

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

*Amendment*

traction current, charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment *without prejudice to the application of Directive 2009/72/EC*;

**Amendment 86**

**Council position**

**Annex II – paragraph 3 – point a a (new)**

*Council position*

*Amendment*

(*aa*) *conditions and prices for the use of power supply and transmission lines which shall be equitable for all operators*;

*Justification*

*This is an amendment from Parliament's first reading.*



## Amendment 87

### Council position

#### Annex V – paragraph 1

##### *Council position*

the scope of the agreement as regards infrastructure and service facilities, structured according to Annex II. It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation;

##### *Amendment*

the scope of the agreement as regards infrastructure and service facilities, structured according to Annex II. It shall cover all aspects of infrastructure management, including maintenance and renewal of the infrastructure already in operation. ***Where appropriate, construction of new infrastructure may also be covered;***

##### *Justification*

*This is an amendment from Parliament's first reading.*

## Amendment 88

### Council position

#### Annex V – paragraph 2

##### *Council position*

the structure of payments or funds allocated to the infrastructure services listed in Annex II, to maintenance and to dealing with existing maintenance backlogs;

##### *Amendment*

the structure of payments or funds allocated to the infrastructure services listed in Annex II, to maintenance ***and renewal*** and to dealing with existing maintenance ***and renewal*** backlogs. ***Where appropriate, the structure of payments or funds allocated to new infrastructure may be covered;***

## Amendment 89

### Council position

#### Annex V – paragraph 5

##### *Council position*

5. the incentives ***referred to*** in Article

##### *Amendment*

5. the incentives in ***accordance with***

30(1), *with the exception of those incentives implemented through regulatory measures in accordance with Article 30(3);*

Article 30(1);

*Justification*

*This amendment re-establishes the text from the original Commission proposal.*

**Amendment 90**

**Council position  
Annex V – paragraph 8**

*Council position*

8. rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and information of users;

*Amendment*

8. rules for dealing with major disruptions of operations and emergency situations, including contingency plans and early termination of the contractual agreement, and ***timely*** information of users;

*Justification*

*This is Parliament's first reading amendment which has been slightly modified to reflect the ongoing negotiations with the Council.*

## EXPLANATORY STATEMENT

After the Parliament had adopted its first reading on 11 November 2011, the Council reached a political agreement on 12 December 2011 and a position in first reading on 8 March 2012 by qualified majority. Since January 2012 Parliament, Council and Commission are in informal negotiations to prepare an agreement in second reading. However, as the Council in its position did only to a very limited extent take into account the progress made in these negotiations, your rapporteur in her draft recommendation is largely reiterating the position Parliament adopted in 1st reading, with the exception of certain minor changes made by Council to the Commission proposal.

The Commission states in its communication on the Council's position<sup>1</sup>:

"While still being in line with the general objective of simplification and increasing transparency by consolidating three existing directives and their modifications, the Council weakened the Commission proposal concerning access to rail-related services, infrastructure financing, infrastructure charges and powers of the regulatory body. In some cases, the Council's position confirms existing law without further improvement..."

Your rapporteur shares the critical assessment of the Council position made by the Commission. In its first reading Parliament is presenting ambitious proposals with a view to establish a single European railway area. The making of such an area should still be our objective because the various national railway systems leave the sector hampered by national boundaries which heavily limit the development of the sector and the competitiveness of rail transport vis-à-vis other modes of transport. For the further construction of a single European railway area Parliament needs to hold on to its ambitions.

Since January this year the EP delegation has been in informal negotiations with the Council and the Commission to improve the text of the Council and on certain points progress has been made. However, on the most crucial elements the discussion is due to continue until the end of the four months period foreseen for the second reading in Parliament.

These main points are the following:

### ***Regulatory body***

The Council's text meets some of Parliament concerns and improves the current legislation, increasing the role and power of national regulatory bodies to some extent. Independent regulators are crucial for establishing a level playing-field between big and small railway companies. A more ambitious text can still be found when it comes to the independence of the regulatory body and the way it should handle complaints: greater independence and tighter deadlines for taking decisions should be aimed for. Ultimately national regulatory bodies

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<sup>1</sup> Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council (1st reading) on the adoption of a Directive of the European Parliament and of the Council establishing a single European railway area (Recast)

should become trusted entities whose decisions are reliable and timely. Parliament equally decided in first reading that in the longer run a European regulatory body should be established to be able to overlook cross-border transport. To lay the foundation for such a body, a network of the national regulatory bodies should be formed.

### ***Financing***

Parliament should continue its efforts to achieve a more stable funding situation for railway infrastructure. In particular the Council's proposals to lower the duration of the multi-annual contractual agreement to three years should be rejected and a duration of seven years should be proposed instead. This contractual agreement defines the basic principles agreed between public authorities and the infrastructure manager regarding the management and development of railway infrastructure and thereby gives the infrastructure manager and ultimately railway companies a reliable basis for their work. Accordingly the provisions on the financial balance of the infrastructure manager should be reinforced to ensure that funding deficits are redressed by Member States in a reliable way.

### ***Network management independence and financial transparency***

Parliament adopted changes to increase transparency of financial flows in particular in integrated undertakings that provide rail transport services and infrastructure management. The Council decided not to modify the wording of the legislation currently in force although this very wording has led to major differences in interpretation and consequently to a number of pending cases at the European Court of Justice. The need to improve the text on this point to ensure greater clarity is therefore obvious.

### ***Infrastructure charging principles***

Parliament has insisted from the beginning on establishing a compulsory mechanism to reduce railway noise emissions caused by trains. Noisy trains have negative effects on people's health and therefore on their acceptance of rail transport and are ultimately harmful for the development of the sector. An effective noise reduction scheme should therefore be found.

Another aspect linked to charging is the promotion of ERTMS by way of a bonus-malus system for trains equipped with ETCS that run on lines that are not equipped with this system. The roll-out of ERTMS has been slow and sometimes deliberately slowed down by Member States. The system is essential for increasing cross-border rail transport and should therefore be promoted in order to make the sector a more attractive means of transport in particular for freight.

### ***Essential functions of the infrastructure manager***

To increase the role and responsibility of the infrastructure manager is an important goal for a more impartial management of the network. Path allocation and the setting and collection of charges have already been identified as essential tasks of the infrastructure manager. However, the development of the network should become part of these tasks as well and therefore new investments in infrastructure should be decided by the infrastructure manager who can take into account the needs of the entire sector when planning new projects.

### ***Access to rail-related services***

Transparent rules on access to rail-related service and service facilities (freight terminals,

maintenance facilities, train formation facilities etc) are crucial to ensure that transport operators can operate their services. The current negotiations are heading into the right direction on this point. Nevertheless, in order to demonstrate the importance Parliament attaches to this aspect your rapporteur re-tables certain amendments from first reading.

***Final provisions - date of entry into force***

Council request very long delays for the entry into force of this new Directive: 36 months for most of the provisions and even 60 months for the setting-up of the regulatory body the setting up of which was already required by legislation currently in force. This is not acceptable and would delay unnecessarily urgent reform. Therefore your rapporteur insists on setting a deadline of 12 months for the transposition of the entire Directive.

On all these main points your rapporteur will therefore re-establish the amendments adopted in first reading in Plenary in order to defend in the on-going trilogues with the Council the position of the Parliament which was adopted with a large majority.

## PROCEDURE

<b>Title</b>	Single European railway area (recast version)
<b>References</b>	18581/2/2011 – C7-0073/2012 – 2010/0253(COD)
<b>Date of Parliament's first reading – P number</b>	16.11.2011                      T7-0503/2011
<b>Commission proposal</b>	COM(2010)0475 - C7-0268/2010
<b>Receipt of Council position at first reading announced in plenary</b>	15.3.2012
<b>Committee responsible</b> Date announced in plenary	TRAN 15.3.2012
<b>Rapporteur(s)</b> Date appointed	Debora Serracchiani 27.9.2010
<b>Discussed in committee</b>	23.4.2012                      30.5.2012
<b>Date adopted</b>	31.5.2012
<b>Result of final vote</b>	+:                      35 -:                      6 0:                      1
<b>Members present for the final vote</b>	Magdi Cristiano Allam, Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Joseph Cuschieri, Philippe De Backer, Luis de Grandes Pascual, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Jacqueline Foster, Mathieu Grosch, Jim Higgins, Juozas Imbrasas, Dieter-Lebrecht Koch, Jaromír Kohlíček, Georgios Koumoutsakos, Werner Kuhn, Eva Lichtenberger, Gesine Meissner, Mike Natrass, Hubert Pirker, Dominique Riquet, Petri Sarvamaa, Debora Serracchiani, Laurence J.A.J. Stassen, Keith Taylor, Silvia-Adriana Țicău, Giommara Uggias, Thomas Ulmer, Artur Zasada, Roberts Zile
<b>Substitute(s) present for the final vote</b>	Andrea Cozzolino, Spyros Danellis, Bogdan Kazimierz Marcinkiewicz, Sabine Wils, Janusz Władysław Zemke
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Lidia Joanna Geringer de Oedenberg, Mario Pirillo
<b>Date tabled</b>	7.6.2012