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THE EUROPEAN UNION**

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from: Lithuanian Parliament

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to: General Secretariat of the Council of the European Union

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004

**[Council ST 6012/13 - COM (2013) 27 final]**

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail

**[Council ST 5960/13 - COM (2013) 28 final]**

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure

**[Council ST 5985/13 - COM (2013) 29 final]**

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the interoperability of the rail system within the European Union (Recast).

**[Council ST 6013/13 - COM (2013) 30 final]**

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on railway safety (Recast).

**[Council ST 6014/13 - COM (2013) 31 final]**

- Opinion on the application of the Principles of Subsidiarity and Proportionality<sup>1</sup>

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Delegations will find annexed a copy of the above-mentioned letter.

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<sup>1</sup> Translation(s) of the opinion may be available in English on the Interparliamentary EU information exchange Internet site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/search.do>





SEIMAS OF THE REPUBLIC OF LITHUANIA

RESOLUTION

REGARDING A REASONED OPINION ON A POSSIBLE BREACH OF THE  
PRINCIPLE OF SUBSIDIARITY BY THE EUROPEAN COMMISSION  
PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL ON THE EUROPEAN UNION AGENCY  
FOR RAILWAYS AND REPEALING REGULATION (EC) NO 881/2004  
COM (2013) 27

26 March 2013

Vilnius

The Seimas of the Republic of Lithuania,

*pursuant to Article 180<sup>6</sup> of the Statute of the Seimas, having debated the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and Repealing Regulation (EC) No 881/2004 COM (2013) 27,*

**approves** the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and Repealing Regulation (EC) No 881/2004 COM (2013) 27.

SPEAKER OF THE SEIMAS



VYDAS GEDVILAS

EXTRACT



SEIMAS OF THE REPUBLIC OF LITHUANIA  
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION

ON POSSIBLE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF  
THE PROPOSAL OF THE EUROPEAN COMMISSION FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON THE EUROPEAN UNION AGENCY FOR RAILWAYS AND REPEALING REGULATION (EC) NO 881/2004

Document No COM (2013) 27

20 March 2013 No 100-P-37  
Vilnius

Relevance of the Proposal to Lithuania: **Very relevant**

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| <p><b>On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:</b></p> | <p>Committee on European Affairs,<br/><i>Having regard</i> to the position of the Ministry of Transport and Communications on the Proposal of the European Commission for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 COM (2013) 27 (hereinafter referred to as the Proposal),<br/><i>Having analysed</i> the conclusions of the Seimas Legal Department and the Seimas Committee on Economics on</p> |
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the Proposal,

*Having assessed the conclusions of the European Law Department under the Ministry of Justice on the Proposal,*

*Taking into account Article 5(3) of the Treaty on European Union, Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality, Protocol (No 26) on Services of General Interest, annexed to the Treaty on the Functioning of the European Union, and in particular Article 91(2) of the Treaty on the Functioning of the European Union stipulating that "When the measures\* referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities"*

*H a s c o n c l u d e d as follows:*

*The Proposal of the European Commission for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 COM (2013) 27 does not comply with the principle of subsidiarity on the following grounds:*

- 1. The Proposal envisages new tasks for the European Railway Agency (ERA). The ERA would be responsible for issuing single safety certificates, authorisations for placing on the market for railway vehicles and for types of vehicles and authorisations for placing in service of trackside control-command and signalling sub-systems operating within the whole EU. There are doubts whether the assignment of new tasks for the ERA would help in achieving the objectives of the Proposal – to eliminate remaining administrative and technical barriers and to improve the competitiveness of the rail sector.*
- 2. The Proposal offers to hand the function of issuing certificates and authorisations over to the European Railway Agency (ERA) which is not sufficiently qualified for assessing national railway infrastructures, technical interoperability of railway infrastructures, conformity with respective technical specifications for interoperability and with national rules related to operating parameters of rolling stock of each Member State, and intends to rely on external experts who in fact are representatives of the National Safety Authorities (NSA) and perform this function now. Therefore, there is no reason to hand the function over to the ERA because this would not comply with the principle of subsidiarity. Moreover, the NSA would remain responsible for performing assessment of documents necessary for certificates and authorisations, maintenance of railway rolling stock and other tasks.*


3. Efficiency of certification and authorisation processes is characterised by shorter duration for issuance of certificates and authorisations and reduced administrative and other costs. Certificates and authorisations have to be issued within the period of four months, i.e. within the period currently in force. However, the need to translate applications for safety certificates and accompanying documentation into/from the EU working language is not taken into consideration. This raises the question as to whether the currently established time limit of four months for issuing a safety certificate will have to be extended. Moreover, translations will lead to higher costs, the source of which is not clear.

4. The Proposal does not clearly define the limits of competences of national authorities. The interaction (shared competences) between the ERA and national authorities may be defined by mutual agreements. However, the forms and scope of cooperation should be established only by legal acts enforcing these Proposals. Therefore, there are doubts as to the effectiveness of such cooperation on issuance of certificates and authorisations. Moreover, the level of external fees and charges, and their division by the ERA and the NSAs are not clear.

The analysis of the Proposal reveals that the Proposal of the European Commission for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 COM (2013) 27 does not sufficiently justify the need for taking over the function of issuing safety certificates by the European Railway Agency from the National Safety Authorities. This decision would violate the principle of subsidiarity, discriminate small carriers on the market, and have strong implications on railway undertakings, which currently pay much lower fees and charges for certificates and authorisations and operate only on the national level, as well as increase transportation costs.

\* Article 91 (1) establishes a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; b) the conditions under which non-resident carriers may operate transport services within a Member State; c) measures to improve transport safety; d) any other appropriate provisions.

Chair of the Committee

  
Gediminas Kirkilas



SEIMAS OF THE REPUBLIC OF LITHUANIA

**RESOLUTION**  
**REGARDING A REASONED OPINION ON A POSSIBLE BREACH OF**  
**THE PRINCIPLE OF SUBSIDIARITY BY**  
**THE EUROPEAN COMMISSION PROPOSAL FOR**  
**A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**AMENDING REGULATION (EC) NO 1370/2007 CONCERNING**  
**THE OPENING OF THE MARKET FOR**  
**DOMESTIC PASSENGER TRANSPORT SERVICES BY RAIL COM (2013) 28**

26 March 2013

Vilnius

The Seimas of the Republic of Lithuania,  
*pursuant to* Article 180<sup>6</sup> of the Statute of the Seimas, having debated the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1370/2007 Concerning the Opening of the Market for Domestic Passenger Transport Services by Rail COM(2013) 28,

**approves** the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1370/2007 Concerning the Opening of the Market for Domestic Passenger Transport Services by Rail COM(2013) 28.



SPEAKER OF THE SEIMAS

VYDAS GEDVILAS

EXTRACT



SEIMAS OF THE REPUBLIC OF LITHUANIA  
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION

ON POSSIBLE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF  
THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC)  
NO 1370/2007 CONCERNING THE OPENING OF THE MARKET FOR DOMESTIC PASSENGER TRANSPORT SERVICES BY RAIL

Document No COM (2013) 28

20 March 2013 No 100-P-37  
Vilnius

Relevance of the Proposal to Lithuania: **Very relevant**

**On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:**

Committee on European Affairs,

*Having regard* to the position of the Ministry of Transport and Communications on the Proposal of the European Commission for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail COM (2013) 28 (hereinafter referred to as the Proposal),

*Having analysed* the conclusions of the Seimas Legal Department and the Seimas Committee on Economics on the Proposal,



Having assessed the conclusions of the European Law Department under the Ministry of Justice on the Proposal, Taking into account Article 5(3) of the Treaty on European Union, Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality, Protocol (No 26) on Services of General Interest, annexed to the Treaty on the Functioning of the European Union, and in particular Article 91(2) of the Treaty on the Functioning of the European Union stipulating that "When the measures\* referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities"

Has concluded as follows:

The Proposal of the European Commission for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail COM (2013) 28 **does not comply with the principle of subsidiarity** on the following grounds:

1. The Proposal provides for a legal regulation of transport services operating under public service contracts. The Proposal introduces mandatory competitive award of rail contracts, by denying competent authorities the option of deciding whether to award a public service contract for rail directly or based on a competitive tender. It is noteworthy that public rail services are attributed to services of general interest, which require the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users. Therefore, the obligation of Member States to apply a public tender procedure is in breach of the principle of subsidiarity, because, due to the size of the Member States markets for passenger transport services, tenders may be disproportionately costly and will violate the competence of Member States with regard to services of general interest. Furthermore, it should be noted that due to Lithuania's geographical situation, the integration of the Lithuanian railway in the 1520 mm gauge rail system and movement of passengers to and from third countries, the number of tenderers will be limited to the companies currently operating in the market.

2. The Proposal introduces an obligation on Member States to ensure effective and non-discriminatory access to suitable rail rolling stock for operators wishing to provide public passenger services by rail. In Member States where there are no well-functioning leasing markets for rail rolling stock, it is up to competent authorities to take measures to ensure access to rolling stock in order to open up the market. The analysis reveals that the said provisions of the Proposal are in breach of the principle of subsidiarity and do not take account of the specificities of the Member States markets for rail transport services. In the

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|  | <p>Lithuanian market of rail transport services, the AB <i>Lietuvos geležinkeliai</i> (public company <i>Lithuanian Railways</i>) has ownership rights to all passenger rail rolling stock. Additionally, there is no leasing market for rail rolling stock. Creation of a leasing market for rail rolling stock would place an unbearable financial burden on Lithuania, because currently the State does not allocate any funds for acquisition of rolling stock.</p> <p>The analysis of the Proposal provisions demonstrates that the Proposal of the European Commission for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail COM (2013) 28 does not take into account the geographical situation and specificities of passenger transport by rail and is in violation of the competence of Member States with regard to services of general interest and this constitutes possible non-compliance with the principle of subsidiarity.</p> <p>* Article 91 (1) establishes a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; b) the conditions under which non-resident carriers may operate transport services within a Member State; c) measures to improve transport safety; d) any other appropriate provisions.</p> |
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Chair of the Committee

Gediminas Kirkilas



SEIMAS OF THE REPUBLIC OF LITHUANIA

RESOLUTION  
REGARDING A REASONED OPINION ON A POSSIBLE BREACH  
OF THE PRINCIPLE OF SUBSIDIARITY BY  
THE EUROPEAN COMMISSION PROPOSAL FOR A DIRECTIVE  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
AMENDING DIRECTIVE 2012/34/EU OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL OF 21 NOVEMBER 2012 ESTABLISHING  
A SINGLE EUROPEAN RAILWAY AREA, AS REGARDS THE OPENING  
OF THE MARKET FOR DOMESTIC PASSENGER TRANSPORT SERVICES  
BY RAIL AND THE GOVERNANCE OF THE RAILWAY INFRASTRUCTURE

COM(2013) 29

26 March 2013

Vilnius

The Seimas of the Republic of Lithuania,

*pursuant* to Article 180<sup>6</sup> of the Statute of the Seimas, having debated the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 Establishing a Single European Railway Area, as Regards the Opening of the Market for Domestic Passenger Transport Services by Rail and the Governance of the Railway Infrastructure COM(2013) 29,

**approves** the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 Establishing a Single European Railway Area, as Regards the Opening of the Market for Domestic Passenger Transport Services by Rail and the Governance of the Railway Infrastructure COM(2013) 29.

SPEAKER OF THE



VYDAS GEDVILAS



SEIMAS OF THE REPUBLIC OF LITHUANIA  
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION

ON POSSIBLE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF  
THE PROPOSAL OF THE EUROPEAN COMMISSION FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL AMENDING DIRECTIVE 2012/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 21 NOVEMBER 2012  
ESTABLISHING A SINGLE EUROPEAN RAILWAY AREA, AS REGARDS THE OPENING OF THE MARKET FOR DOMESTIC  
PASSENGER TRANSPORT SERVICES BY RAIL AND THE GOVERNANCE OF THE RAILWAY INFRASTRUCTURE

Document No COM (2013) 29

20 March 2013 No 100-P-37  
Vilnius

Relevance of the Proposal to Lithuania: very relevant

On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:

Committee on European Affairs,

*Having regard to the position of the Ministry of Transport and Communications on the Proposal of the European Commission for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure COM (2013) 29 (hereinafter referred to as the Proposal),*

*Having analysed the conclusions of the Seimas Legal Department and the Seimas Committee on Economics on the Proposal,*

*Having assessed the conclusions of the European Law Department under the Ministry of Justice on the Proposal,*

*Taking into account Article 5(3) of the Treaty on European Union, Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality, Protocol (No 26) on Services of General Interest, annexed to the Treaty on the Functioning of the European Union, and in particular Article 91(2) of the Treaty on the Functioning of the European Union stipulating that "When the measures" referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities"*

*H a s c o n c l u d e d* as follows:

The Proposal of the European Commission for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure COM (2013) 29 **does not comply with the principle of subsidiarity** on the following grounds:

1. The Proposal replaces Directive 2012/34/EU the provisions of which are to be transposed into national law by 15 June 2015 and pursues the same objectives of the independence of infrastructure managers from railway transport undertakings. It is reasonable to state that as long as the provisions of Directive 2012/34/EU are not implemented and the practical effect of the implementation of these provisions is not assessed, the need and necessity for further action at the EU level are open to question, especially given the potential financial, economic and social consequences ensuing from the implementation of the Proposal. Member States should decide themselves on the suitability of the governance model inasmuch as Member States hold highly polarised views regarding the appropriateness of solutions that should ensure the independent and efficient governance of the railway infrastructure.
2. Lithuania uses a vertically integrated railway infrastructure model which has been chosen in view of the specificities of railway transport in Lithuania (geographical position of Lithuania, integration of the Lithuanian railway into the 1520 mm gauge railway network, dominance of third country freight transport, profitability of freight transport and losses related to passenger transport) which are important in providing services of general interest. Moreover, Lithuanian railway transport undertakings do not compete with each other inside the country but they face competition from neighbouring countries for third country freight. Such freight also determines the activities of national seaports.
3. The choice of the railway infrastructure model in Lithuania was made in view of the important role

railways play in ensuring national security. Third countries have repeatedly expressed their intention to take over transport services by rail in Lithuania. It must therefore be considered that the state has the right to decide itself on the governance of the railway infrastructure.

The analysis of the provisions of the Proposal reveals that the Proposal of the European Commission for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure COM (2013) 29 fails to take into consideration factors related to railway infrastructure and geographical position of Member States which is in breach of the principle of subsidiarity.

\* Article 91 (1) establishes a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; b) the conditions under which non-resident carriers may operate transport services within a Member State; c) measures to improve transport safety; d) any other appropriate provisions.

Gediminas Kirkilas

Chair of the Committee



SEIMAS OF THE REPUBLIC OF LITHUANIA

RESOLUTION

REGARDING A REASONED OPINION ON A POSSIBLE BREACH OF THE  
PRINCIPLE OF SUBSIDIARITY BY THE EUROPEAN COMMISSION  
PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL ON THE INTEROPERABILITY OF THE RAIL  
SYSTEM WITHIN THE EUROPEAN UNION (RECAST) COM(2013) 30

26 March 2013

Vilnius

The Seimas of the Republic of Lithuania,

*pursuant to* Article 180<sup>6</sup> of the Statute of the Seimas, having debated the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Directive of the European Parliament and of the Council on the Interoperability of the Rail System within the European Union (Recast) COM (2013) 30,

**approves** the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Directive of the European Parliament and of the Council on the Interoperability of the Rail System within the European Union (Recast) COM (2013) 30.

SPEAKER OF THE SEIMAS



VYDAS GEDVILAS



SEIMAS OF THE REPUBLIC OF LITHUANIA  
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION  
ON POSSIBLE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF  
THE PROPOSAL OF THE EUROPEAN COMMISSION FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON THE INTEROPERABILITY OF THE RAIL SYSTEM WITHIN THE EUROPEAN UNION (RECAST)

Document No COM (2013) 30  
20 March 2013 No 100-P-37  
Vilnius

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| <p><b>On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:</b></p> | <p>The Committee on European Affairs,</p> <p><i>Having regard to</i> the position of the Ministry of Transport and Communications on the Proposal of the European Commission for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (recast) COM(2013) 30 (hereinafter referred to as the Proposal),</p> <p><i>Having analysed</i> the conclusions of the Seimas Legal Department and the Seimas Committee on Economics on the Proposal,</p> <p><i>Having assessed</i> the conclusions of the European Law Department under the Ministry of Justice on the Proposal,</p> <p><i>Taking into account</i> Article 5(3) of the Treaty on European Union, Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty on the Functioning of the European Union, and in particular Article 91(2) of the Treaty on the Functioning of the European Union stipulating that “When the measures* referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities”</p> <p>Has concluded as follows:</p> |
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The Proposal of the European Commission for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (recast) COM(2013) 30 **does not comply with the principle of subsidiarity** on the following grounds:

1. The Proposal provides for a possibility to place rolling stock on the market only with an authorisation of the European Railway Agency (ERA) which is not sufficiently competent in assessing technical interoperability of the rail system and conformity not only with respective technical specifications for interoperability but also with national rules of each EU Member State on parameters of operation of rolling stock. For assessing national rail infrastructures of the EU Member States, the ERA intends to rely on external experts who are basically members of the NSAs and perform this function now. Therefore, there is no reason to hand this function over to the ERA because this would be contrary to the principle of subsidiarity, while the NSAs would further assess documents needed to obtain an authorisation and further check rolling stock. The ERA would act only as a coordinator of the procedure of issuing rolling stock authorisations for placing on the market.


2. Rolling stock authorisations for placing on the market should be issued within four months, i.e. within the time limit established currently, while the need to translate applications for safety certificates and accompanying documentation into/from the EU working language is not taken into consideration. This raises the question as to whether the currently established time limit of four months for issuing a safety certificate will have to be extended. Moreover, translations will lead to higher costs, the source of which is not clear.

3. The Proposal does not clearly define the limits of the NSAs' competence. The relationship between the ERA and the NSAs (division of functions) may be stipulated by mutual written agreements. However, forms and scope of cooperation should be established in legislation enforcing the Proposal. Therefore, there are doubts as to the effectiveness of cooperation in issuing authorisations. Moreover, the level of fees and charges and their division by the ERA and the NSAs is not clear.

The analysis of the Proposal reveals that the Proposal of the European Commission for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (recast) COM(2013) 30 does not sufficiently justify the need for taking over the function of issuing safety certificates by the European Railway Agency from the National Safety Authorities. Such a decision would violate the principle of subsidiarity, discriminate small carriers on the market and increase transportation costs.

\* Article 91 (1) establishes a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; b) the conditions under which non-resident carriers may

operate transport services within a Member State; c) measures to improve transport safety; d) any other appropriate provisions.



Gediminas Kirklis

Chair of the Committee



SEIMAS OF THE REPUBLIC OF LITHUANIA

RESOLUTION

REGARDING A REASONED OPINION ON A POSSIBLE BREACH OF THE PRINCIPLE OF SUBSIDIARITY BY THE EUROPEAN COMMISSION PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON RAILWAY SAFETY (RECAST) COM (2013) 31

26 March 2013

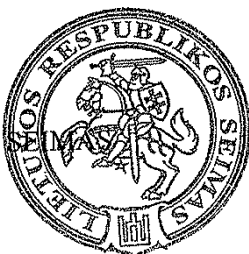
Vilnius

The Seimas of the Republic of Lithuania,

*pursuant to* Article 180<sup>6</sup> of the Statute of the Seimas, having debated the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Directive of the European Parliament and of the Council on Railway Safety (Recast) COM (2013) 31,

**approves** the conclusion of the Committee on European Affairs of the Seimas of the Republic of Lithuania Regarding a Possible Breach of the Principle of Subsidiarity by the Proposal for a Directive of the European Parliament and of the Council on Railway Safety (Recast) Com (2013) 31.

SPEAKER OF THE



VYDAS GEDVILAS



SEIMAS OF THE REPUBLIC OF LITHUANIA  
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION  
ON POSSIBLE NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF  
THE PROPOSAL OF THE EUROPEAN COMMISSION FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON RAILWAY SAFETY (RECAST)

Document No COM (2013) 31  
20 March 2013 No 100-p-37  
Vilnius

Relevance of the Proposal to Lithuania: **very relevant**

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| <p><b>On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:</b></p> | <p>The Committee on European Affairs,<br/><i>Having regard to</i> the position of the Ministry of Transport and Communications on the Proposal of the European Commission for a Directive of the European Parliament and of the Council on railway safety (recast) COM(2013) 31 (hereinafter referred to as the Proposal),<br/><i>Having analysed</i> the conclusions of the Seimas Legal Department and the Seimas Committee on Economics on the Proposal,<br/><i>Having assessed</i> the conclusions of the European Law Department under the Ministry of Justice on the Proposal,<br/><i>Taking into account</i> Article 5(3) of the Treaty on European Union, Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality, Protocol (No 26) on Services of General Interest, annexed to the</p> |
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Treaty on the Functioning of the European Union, and in particular Article 91(2) of the Treaty on the Functioning of the European Union stipulating that “When the measures\* referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities”

Has concluded as follows:

The Proposal of the European Commission for a Directive of the European Parliament and of the Council on railway safety (recast) COM(2013) 31 **does not comply with the principle of subsidiarity** on the following grounds:

1. The Proposal offers to hand the function of issuing safety certificates from the National Safety Authorities (NSAs) over to the European Railway Agency (ERA) which is not sufficiently qualified for assessing national rail infrastructures of the EU Member States and intends to rely on external experts who are basically members of the NSAs and perform this function now. Therefore, there is no reason to hand this function over to the ERA because this would not only be contrary to the principle of subsidiarity, but also would make the issuance of safety certificates more expensive. (Costs may increase from 365 euros levied currently by Lithuania for issuing Parts A and B of a safety certificate to 10,000 euros – current EU average). Increase in costs of safety certificates favours large railway undertakings and will enable creation of an oligopolistic market structure.
2. In the administrative procedure of issuing safety certificates, the need to translate applications for safety certificates and accompanying documentation into/from the EU working language is not taken into consideration. This raises the question as to whether the currently established time limit of four months for issuing a safety certificate will have to be extended. Moreover, translations will lead to higher costs, the source of which is not clear.
3. From the point of view of railway safety, when the ERA takes over the function of issuing safety certificates from the NSAs, it will also have the right to take decisions, including on withdrawal of certificates. This would limit the NSAs' power to take expeditious measures against railway undertakings violating railway safety rules, which would pose threat to railway safety.

The analysis of the Proposal reveals that the Proposal of the European Commission for a Directive of the European Parliament and of the Council on railway safety (recast) COM(2013) 31 does not sufficiently justify

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the need for taking over the function of issuing safety certificates by the European Railway Agency from the National Safety Authorities. Such a decision would violate the principle of subsidiarity, discriminate small carriers on the market and increase transportation costs.

\* Article 91 (1) establishes a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; b) the conditions under which non-resident carriers may operate transport services within a Member State; c) measures to improve transport safety; d) any other appropriate provisions.



Gediminas Kirkilas

Chair of the Committee