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## Council adopts its first-reading position on single European railway area directive

The Council today adopted<sup>1</sup> its position at first reading ([18581/11](#)) on a draft directive establishing a single European railway area, following the political agreement reached last December (see press release [18416/11](#), pp. 7-8). Initial technical discussions with the European Parliament have already started in order to seek agreement on a final text to be adopted jointly by both institutions at second reading.

The draft directive is a recast merging and amending the three directives of the "first railway package" on the development of European railways, the licensing of railway undertakings and the management of railway infrastructure (directives Nos 12, 13 and 14 of 2001). The 2001 package launched a gradual opening-up of the railway sector to competition at European level. The purpose of the recast is to simplify, clarify and update this regulatory framework so as to increase competition, strengthen market supervision and improve conditions for investment in the sector.

Whilst agreeing with the objective of the recast proposal, the Council considers a number of its provisions to be too far-reaching or not clear and simple enough. It therefore modified the Commission's proposal, and in particular its key parts, namely the conditions of **access** by railway undertakings to service facilities; the **financing** of railway infrastructures and **charging** for their use; and the functions of the **regulatory body** supervising the railway market. The Council's position towards the initial Commission proposal ([13789/10](#)) and the European [Parliament's first-reading position](#) is explained in detail in its "statement of reasons" ([18581/11 ADD 1](#)). The main points can be summarised as follows:

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<sup>1</sup> The decision was taken without discussion at a meeting of the Justice and Home Affairs Council. Austria (see statement in [6804/12 ADD 1 REV 1](#)) and Luxembourg voted against, and Estonia abstained.

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On access conditions:

- The Council cancelled the proposed requirement for the service facility operator to be legally independent from railway undertakings using the facilities and replaced it by a requirement of **independence** in organisational and decision-making terms, as far as essential service facilities are concerned, while other facilities only have to comply with the separation of accounts. Moreover, this independence requirement does not mean that a separate body needs to be created.
- The Council qualified the proposed obligation to publicise an **unused facility for lease** with three conditions: the facility has to have been unused for three years (instead of two in the Commission proposal); there must be a justified demand by railway undertakings; and the obligation does not apply to facilities undergoing a conversion process.

On charging:

- While supporting the principle of charges reflecting the direct costs incurred by infrastructure managers, the Council removed a list of elements that the Commission proposed to exclude from the calculation of the direct costs. In addition, the Council introduced the possibility for member states to gradually adapt to the common calculation methodology.
- Charging the cost of noise effects should not be compulsory for member states, as proposed by the Commission, but optional in order to avoid excessive costs for infrastructure managers. Moreover, it should be possible to take into account the size of the population affected and the type of train when factoring in the cost of noise.
- Granting a temporary reduction of the infrastructure charge for trains equipped with the European train control system (ETCS) should be optional and not compulsory, as advocated by the Commission and the European Parliament.

On financing of infrastructure:

- As regards the incentives to be given to infrastructure managers to reduce the costs of providing infrastructure and the level of access charges, the Council introduced the possibility of applying regulatory measures to this end, and not only contractual agreements as proposed by the Commission.
- In contrast to the Commission and the European Parliament, the Council considers that the development strategy to be published by infrastructure managers only needs to be indicative and that no fixed deadline should be set for ensuring that managers' accounts are balanced.
- The Council cannot accept the EP amendments aimed at increasing the duration of the development strategies, obliging member states to provide public financing and fixing a shorter deadline for balanced accounts.

On the regulatory body:

- The Council generally agrees to strengthening the **independence** and extending the **competencies** of the regulatory bodies and enhancing cooperation between them. However, it reviewed the independence requirements proposed for the bodies' staff, secured the powers of the national competition authorities and did not take on board an obligation for infrastructure managers to provide detailed regulatory accounts. The Council does not accept the EP amendments aimed at further extending the regulatory bodies' powers, establishing a formal network of regulatory bodies and calling for the creation of a European regulatory body.

On the separation between management and use of infrastructure:

- While the European Parliament wants to introduce specific separation requirements for IT and staff management and calls upon the Commission to draw up, by 2012, a new legislative proposal for complete separation between infrastructure managers and railway undertakings, the Council is not in favour of further separation requirements and is of the opinion that the issue of a general separation should not be tackled in this directive.

Concerning the adoption of detailed rules for implementation, the Council reduced the parts of the proposal for which the Commission should be empowered to act autonomously by adopting "delegated acts". On the other hand, it introduced the procedure of "implementing acts", involving experts both from the member states and the Commission, for certain parts of the text. The European Parliament also wishes to restrict the use of delegated acts, but is against the use of implementing acts.

Moreover, the Council did not take into consideration EP amendments that would introduce substantive changes to provisions of the railway package which remained unchanged in the Commission's recast proposal, since such amendments go beyond the limits of a legal recast as defined by an inter-institutional agreement. In addition, a list of other EP amendments not acceptable to the Council is set out in its "statement of reasons" ([18581/11 ADD 1](#), pp. 12-13).

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