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ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat of the Council

to: COREPER/COUNCIL

n° prop. Cion: 13789/10 TRANS 238 CODEC 862

Subject: Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast) **(second reading)**

– Approval of the European Parliament's amendments **(LA + S)**

Statements

COMMON GUIDELINES

Consultation deadline: 26.10.2012

Commission statement

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5 (4), 2), point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 (4) recourse to subparagraph 2, point b), cannot be simply seen as a "discretionary power" of the legislator, but must be interpreted in a restrictive manner and thus must be justified.

While the Commission supports the agreement reached by the European Parliament and the Council on the recourse to this provision in nine specific cases which they have justified by reasons of their potential impact on the functioning of the rail market and public finances, it regrets that such justification is not reflected in a recital .

Statement by Germany

Die Regelung in Art. 32 Abs. 4 sieht weiterhin eine zwingende Differenzierung von Trassenentgelten vor, um mit ETCS ausgestatteten Zügen Anreize zu geben. DEU spricht sich gegen die Übernahme von „Haftungsregelungen“ der Mitgliedstaaten für etwaige finanzielle Defizite der EIU aus der Trassenpreisdifferenzierung aus.

DEU geht davon aus, dass die im Rat am 16.Juni 2011 anlässlich der Verabschiedung der Allgemeinen Ausrichtung zu dem Richtlinienvorschlag seitens der Europäischen Kommission abgegebene Erklärung weiterhin Bestand hat, wonach sich die Haushaltvorbehalte (Erwägungsgründe 10 und 37) ausdrücklich auch auf Artikel 8 Abs. 4 beziehen.

DEU geht ferner davon aus, dass Artikel 31 Absatz 5 Unterabsatz 4 die Einführung einer lärmabhängigen Trassenpreiskomponente nach Unterabsatz 1 nicht auf den Zweck begrenzt, nur eine Umrüstung von Güterwagen zu finanzieren, sondern dass dieses Instrument einen allgemeinen Anreiz zur Lärminderung liefern kann und andere Maßnahmen nicht grundsätzlich ausschließt.

DEU weist darauf hin, dass Artikel 13 Absatz 3 Unterabsatz 2 die Einführung einer getrennten Buchführung und Rechnungslegung für „alle Serviceeinrichtungen nach Anhang II“ vorsieht, wobei Anhang II als Serviceeinrichtung beispielsweise Abstellgleise definiert. DEU geht davon aus, dass Artikel 13 Absatz 3 Unterabsatz 2 nicht beabsichtigt, für jede einzelne Serviceeinrichtung eine getrennte Buchführung und Rechnungslegung vorzuschreiben, sondern vielmehr eine Trennung nach Kategorien von Serviceeinrichtungen beabsichtigt.

Statement of the Polish Delegation

Poland attaches high importance to the development of the rail sector. Poland is in the process of conducting difficult and expensive restructuring process of the infrastructure manager. Poland will also gradually increase the investments in the rail infrastructure within the financial capability.

The Directive of the European Parliament and of the Council establishing a single European railway area is an important document, constituting the basis for the development of rail transport. At the same time, it should take into account the difficult financial situation of the Member States and contain appropriate transitional periods.

Poland makes an assumption that obligations arising from the directive cannot be contradictory to the commitments resulting from the Stability and Growth Pact, in particular regarding the binding Excessive Deficit Procedure for some Member States. From this point of view, the transitional periods foreseen in the directive are not sufficient.

Moreover, Poland believes that some of the directive's provisions should not apply to already existing lines used solely for freight operations, having untypical for the EU technical characteristics, and which connect only one Member State with a bordering 3rd country. However, adequate exclusion has not been included in the directive.

Taking the foregoing into account, Poland cannot support the directive and abstains from voting.

Statement by Latvia

Latvia fully supports the initiative to simplify, clarify and modernize the regulatory framework of the European railway area by recasting the first railway package.

Nevertheless, Latvia still maintains concerns regarding some provisions of the Directive:

- Article 7, point 1 sets an obligation for the Member States to show that the independence of essential functions of an infrastructure manager have been achieved. Lack of clearly defined criteria in the Directive and a general requirement for Member States to ensure that the essential functions are entrusted to bodies or firms that do not themselves provide any rail transport services gives possibility for a broad interpretation and will not decrease ambiguity and gaps of the current regulatory framework. Transposition of the current Directive and related infringement procedures prove that Member States have difficulties in this regard. Clearly defined criteria would have allowed a better transposition of the provisions of the Directive as well as ensured the railway sector that national measures are not excessive *vis-à-vis* regulatory framework of the European Union.

Latvia considers that the task given to the Commission in Article 63, point 1 to, 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 while respecting the right of initiative is a step in the right direction, but at the same time does not ensure the necessary certainty that the issue will be solved in a future.

- Latvia also maintains concerns with regard to the inclusion of the function of collection of infrastructure charges in the list of essential functions (Article 7, point 1). Latvia fully understands the necessity to protect the commercially sensitive information, however in case of Latvia this function would have to be transferred from the infrastructure manager, who at the same time is an owner of the infrastructure, to the performer of essential functions. Such an action would hinder the ability of the infrastructure manager to properly control its finances and would also have a negative impact on its existing or future financial obligations as well as financing of the infrastructure development.
- Latvia also believes that the solution to the issue raised by the European Parliament on Article 17, point 1 concerning licensing in respect of relations with third countries and on a network whose track gauge is different from the main rail network within the Union and which is either geographically detached or peripherally located from the Union is not sufficient, and still believes that clear rules for a possibility to apply limitations concerning railway undertakings which are directly or indirectly effectively controlled through the ownership shares of third country or nationals of third country should have been set in the main text of the Directive.

Notwithstanding the above mentioned concerns, Latvia understands the importance of advancing the creation of Single European Railway area and therefore expresses its support to the final compromise of the Directive, while calling on the European Commission to take the issues mentioned above into account when preparing future legislative acts in this area.