

Railway Working Group Belgrade  
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MC Mobility Consultants GmbH  
A-1180 Vienna, Gertzgasse 64 - 66/9  
Telephone: +43 (0) 1 8923500  
office@vienna-mc.com  
www.vienna-mc.com  
Skype: office.vienna-mc




Klaus-Jürgen Uhl  
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V12005  
kju/scw



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What is the point of departure?



1. EU law makes Border Crossing Agreements (BCA) at internal borders redundant. They no longer comply with EU law, but remain in force.
2. Long waiting times at borders, double checks, lack of cooperation, discrimination of foreign or new operators (railway undertakings).
3. EU-Treaty – Member States (MS) have to renegotiate (or even repeal) their international agreements to align them to EU law
4. Article 14 of 2012/34/EU – MS notify all existing rail agreements to EC (DG MOVE) and EC issues a decision on non-compliance. New BCA: 2 steps: 1st notification of the intended contents of a new BCA before starting the negotiations and 2<sup>nd</sup> notification of the draft BCA.
5. EC adopted a decision on agreements on internal borders in August 2014. Further decision on external borders envisaged for the end of 2014.

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What are the main provisions of 34/2013/EU to be observed?




Summary of the provisions that are typically infringed are:

- Art. 5.3 b) "Management of the railway undertakings according to commercial principles"
- Art. 7.1 a) + b) "Independence of essential functions of an infrastructure manager"
- Art. 10.1 + 10.2 "Conditions of access to railway infrastructure"
- Art. 13.1 + 13.2 "Conditions of access to services"
- Art. 29.3 "Establishing, determining and collecting charges"
- Annex II.1 + II.2 "SERVICES TO BE SUPPLIED TO THE RAILWAY UNDERTAKINGS"

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Directive 2012/34/EU establishing a single European railway area (recast)  
Art. 5.3b)



Article 5 Management of the railway undertakings according to commercial principles

[...]

3. With reference to the general policy guidelines issued by each Member State and taking into account national plans and contracts (which may be multiannual) including investment and financing plans, railway undertakings shall, in particular, be free to:

[...]


(b) control the supply and marketing of services and fix the pricing thereof;

[...]

This paragraph is without prejudice to Regulation (EC) No 1370/2007.

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Directive 2012/34/EU establishing a single European railway area (recast)  
Art. 7.1a) + 7.1b)



Article 7 Independence of essential functions of an infrastructure manager

1. Member States shall ensure that the essential functions determining equitable and non-discriminatory access to infrastructure, are entrusted to bodies or firms that do not themselves provide any rail transport services. Regardless of organisational structures, this objective shall be shown to have been achieved.

The essential functions shall be:


(a) decision-making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and

(b) decision-making on infrastructure charging, including determination and collection of the charges, without prejudice to Article 29(1).

Member States may, however, assign to railway undertakings or any other body the responsibility for contributing to the development of the railway infrastructure, for example through investment, maintenance and funding.

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Directive 2012/34/EU establishing a single European railway area (recast)  
Art. 10.1 + 10.2




Article 10 Conditions of access to railway infrastructure

1. Railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure in all Member States for the purpose of operating all types of rail freight services. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities referred to in point 2 of Annex II, and to infrastructure serving or potentially serving more than one final customer.

2. Railway undertakings shall be granted the right of access to railway infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located along the international route and set them down at another, including stations located in the same Member State. That right shall include access to infrastructure connecting service facilities referred to in point 2 of Annex II.

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Directive 2012/34/EU establishing a single European railway area (recast)  
Art. 13.1+13.2





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**Article 13 Conditions of access to services**

1. Infrastructure managers shall supply to all railway undertakings, in a non-discriminatory manner, the minimum access package laid down in point 1 of Annex II.
2. Operators of service facilities shall supply in a non-discriminatory manner to all railway undertakings access, including track access, to the facilities referred to in point 2 of Annex II, and to the services supplied in these facilities.

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Directive 2012/34/EU establishing a single European railway area (recast)  
Art. 29.3




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**Article 29 Establishing, determining and collecting charges**

[...]

3. Infrastructure managers shall ensure that the application of the charging scheme results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market and that the charges actually applied comply with the rules laid down in the network statement.

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Directive 2012/34/EU establishing a single European railway area (recast)  
Annex II.1




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**ANNEX II SERVICES TO BE SUPPLIED TO THE RAILWAY UNDERTAKINGS (referred to in Article 13)**

1. The minimum access package shall comprise:
  - (a) handling of requests for railway infrastructure capacity;
  - (b) the right to utilise capacity which is granted;
  - (c) use of the railway infrastructure, including track points and junctions;
  - (d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
  - (e) use of electrical supply equipment for traction current, where available;
  - (f) all other information required to implement or operate the service for which capacity has been granted.

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Directive 2012/34/EU establishing a single European railway area (recast)  
Annex II.2




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**ANNEX II SERVICES TO BE SUPPLIED TO THE RAILWAY UNDERTAKINGS (referred to in Article 13)**

[...]

2. Access, including track access, shall be given to the following services facilities, when they exist, and to the services supplied in these facilities:
  - (a) passenger stations, their buildings and other facilities, including travel information display and suitable location for ticketing services;
  - (b) freight terminals;
  - (c) marshalling yards and train formation facilities, including shunting facilities;
  - (d) storage sidings;
  - (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;
  - (f) other technical facilities, including cleaning and washing facilities;
  - (g) maritime and inland port facilities which are linked to rail activities;
  - (h) relief facilities;
  - (i) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately.

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The SEETO model BCA





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**Key features of new border crossing agreements**

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SEETO model BCA  
Art. 2 General provisions, objectives and principles  
Paragraph 1




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**Article 2 General Provisions, Objectives and Principles**

1. It is the objective of the Agreement to simplify the border dispatching and reduce the waiting times at the Border Crossing Points by:
  - carrying out border dispatching activities of one state on the territory of the other state
  - establishing the rules for the border dispatching of one state on trains that are moving on the territory of the other state
  - by determining:
    - in which stations of the domestic state the neighbouring state can establish border dispatching points
    - in which Zones the border authorities of the neighbouring state can carry out border dispatching in stations and on the trains in both directions on the territory of the domestic state
    - the Zones

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2. The Contracting Parties guarantee the:
- open access for rail undertakings which wish to enter into the Zone with the aim of crossing the border by means of a simplified procedure of mutual acceptance of licences, safety certificates, traction, rolling stock and driving licences for locomotive drivers,
  - non-discrimination and fair competition in respect to the open access
  - acceptance of International Conventions (e.g. COTIF - CIM /SMGS) as freight and passenger documents,
  - acceptance of other internationally accepted transport documents
  - freedom of rail undertakings to organise their own rail border dispatching procedures by making agreements with the respective border authorities
  - freedom of the border authorities to conclude separate bilateral agreements with each other, in particular,
  - right of the border police of the neighbouring state to carry out controls on the territory of the domestic state,
  - right of the customs authorities to establish a single window service in the Zone,
  - right of phyto-sanitary, sanitary and health and any other authority appointed by either contracting party to carry out controls on the territory of the domestic state and to mutually accept the respective certificates and controls.

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3. The Contracting Parties undertake steps to transfer border dispatching to hinterland terminals as far as the laws and regulations render it possible. Such border dispatching will be accepted by the same border authority at the border.
4. The Contracting Parties agree to publish on the website all documents and procedures required by the border authorities and the infrastructure managers for a smooth border crossing.
5. The Contracting Parties agree that their rail infrastructure managers establish a joint network statement containing ensuring:
- non-discriminatory network admission procedures for the rail undertakings to enter the Zone,
  - one-stop-shop procedures to render easy purchasing of infrastructure services possible,
  - path allocation procedures
  - procedures on infrastructure fee and invoicing that are non-discriminatory, ensure fair competition and render easy payments possible by the rail undertakings.

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