



# SEETO Railway Working Group

## Transposing the recast Directive 2012/34/EU - What is new?

Belgrade, October 2014

1



## Directive on a Single European Railway area

*Repealing 7 different directives*

*Ch II Management independence, Market monitoring, border crossing agreements*

*Ch III Licensing of railway undertakings*

*Ch IV Charging for infrastructure use and capacity allocation, Rail regulatory body*

2



Recast Article, paragraph	Novelty of recast
29 charges	Charging framework and charging rules must be published in the network statement The IM, no longer the RU must collect charges.
Costs and accounts of the infrastructure manager	Compulsory contractual agreement between State and infrastructure manager for a duration of at least 5 years.
30.2	
30.6	Compulsory consultation of applicants and potential applicants on the proposed terms for a future CA.
30.7	IM must set up and maintain an asset register providing expenditure on renewal and upgrading of infrastructure
30.8	Costs must be apportioned to the different categories of services of the infrastructure manager.
31 Principles of charging	IM must demonstrate to the RU that charges comply with methodology and rules and scales laid down in the network statement.
31.2	
31.3 with Annex II	Use of electrical supply equipment and IT must be charged at direct costs of the train service

3



Annex II/ 3	Charges for traction current must be invoiced separately from charges for the use of electrical supply equipment.
31.5	Commission shall adopt implementing measures on direct costs, ERTMS charges and noise charges.
	Additional revenues from environmental charges only allowed if road transport levies a similar charge to internalize environmental effects.
31.10	Operator of the service facility must provide information on charge to be put in the network statement of the infrastructure manager or he must publish the charging information himself on the internet free of charge.
Exceptions to charging principles	Pairs of market segments provided in Annex VI and special segment for passenger services under public service contract. Thus the IM may no longer only distinguish between freight and passenger transport.
32.1	
Sub-paragraph 5	No mark-ups on market segments that carry no traffic

4




32.4	Obligatory differentiation of track access charges in favour of ETCS equipped trains
32.6	Modifications of essential elements in the charging system must be published at least three months before deadlines for publication of the network statement, ie 15 months before beginning of time table period.
35.2 Performance Scheme	Performance scheme further specified. Dispute resolution systems applicable before complaining to regulator. Publication of performance level of each railway undertaking once a year.
36 Reservation charge	RC is mandatory in case of regular non-usage of allocated capacity by the applicant
37 cooperation of IMs	Compulsory cooperation or association to coordinate charging or associate to set the charges on services crossing the networks of more than one network in the Union. IM must ensure the optimal competitiveness of these services and the efficient use of the network. IM must establish procedures. Mark-ups and performance scheme must be efficiently applied.

5



Chapter II	Management independence, separation and access to infrastructure
5.3	RU must be free to decide on the business including prices, marketing, staff, procurement and new activities
5.4	Public shareholders should not go beyond what private shareholders would decide. Limited to major business decisions, no discretionary intervention in management!
6.4	Accounts of the IM must allow monitoring the use of income from infrastructure charges and surpluses from other commercial activities
7.2	Charging and allocation body possible
8.4	Max 5 years to balance profit and loss accounts of the infrastructure manager
9	Debt amortization unit for debts incurred by State railway undertakings before accession to the EU
13.2	Also facility operators must grant access to services.
13.3	Service facility should be managed independently from transport operator that is dominant in a market segment for which the service facility is used.
13.3.3	Separate accounts of the FO.
	Burden of proof of independence is on the FO

6




55.1	RB must combine all functions of rail regulation. Independence in terms of decision making, organization, hierarchy, legal entity RB must be functionally independent of contracting authority for public service contracts. RB can be combined with safety authority, licensing body, competition authority
55.3	The appointing authority for the decision makers at the regulatory authority must not directly exert ownership rights over regulated undertakings. Rules of appointment must be clear and transparent. Transparent selection procedures for persons in charge of decision making, no interest in or business relationship with a regulated undertaking. Annual declaration of commitment and declaration of interest by the decision maker Cool off period of one year with any regulated undertakings or entities.
56.1	Functions of the regulatory authority: network statement, capacity allocation and charging of minimum access package and service facilities.
56.2	Right of RB to launch own initiative procedure
	Close cooperation with safety authority and licensing authority; based on a framework for cooperation, which these authorities must develop jointly. RB must develop recommendations for these authorities on issues that might affect competition. SA and RA must state reasons if they deviate from these recommendations.

7



55.3	Decision makers of RA. Dismissal only for disciplinary, but not for decision making reasons must not seek instructions from government
56.4	RA must have the necessary organizational capacity in terms of human and material resources
	RA supervises negotiations on charges and intervenes if negotiations contravene the requirements of the Directives.
56.5b	Regular consultations by RA of the stakeholders
56.6	Maximum 1 month time limit to respond to requests for information by the regulatory body Right of the regulatory body to impose fines. RB may request data on appeals, market monitoring, own initiative and market observations
56.7	RB must launch consultations on complaints within 1 month Fines on decisions not implemented Administrative appeal to another administrative instance must not be possible RB must reply to complaints on capacity allocation
56.8	Court appeal has no suspensive effect on the appealed decision except in case of irretrievable or manifestly excessive damages on the applicant
56.9	RB must publish its decisions
56.10	RB may initiate audits or external audits on IM, RU and FO. These have to provide all information requested. RB may also draw conclusions on State aid issues, which it will communicate to the competent competition bodies.
57.1	Network of regulatory bodies - Coordinate their decision making
57.2	Mutual assistance in monitoring, complaint handling and investigations of RB of different MS
3	International train paths. RB shall consult other RBs involved in the train path
4	The foreign RB that was consulted must provide all the information that they themselves have to the right to request under their national legislation and transmit to the requesting RB which will use this to take measures.
6	RB have the right to transfer information to the investigating RB abroad
6a	Commission may participate in the exchange of information on individual cases at the request of a regulatory body
7	Commission may adopt common principles for decision making by regulatory bodies. RB may develop such principles.

8



### Delegated Acts (Art. 290 TFEU)

*supplement or amend certain non-essential elements of the basic act;*  
*Perfect equal footing of the two legislators;*  
*The intervention of committees of representatives of Member States is not foreseen;*  
*The legislator may have a revocation and a veto right;*  
*The right of veto intervenes after the adoption of the delegated act by the Commission: the effect of the veto is to block its entry into force (in PRAC the veto relates to a draft decision and impedes its adoption by the Commission).*

9



### Implementing acts (Article 291 TFEU)

Member States are responsible for the implementation of the Union law.

On a subsidiary basis, the Commission is entrusted this role of implementation, when uniform conditions for implementation are necessary (the Council may also exercise implementing powers in some specific cases).

It is therefore the Member States which have to control the Commission when the latter exercises its implementing powers.

10




### Implementing acts

A single procedure in which committees may oppose by QM to the draft measures.

No referral to Council. No institutional role for EP either.

Flexibility for the Commission, which MAY adopt the draft measures where there is no QM against.

11



### Implementing acts – example 1

*Notification by 16/6 for existing agreements and before conclusion of new and revised agreements*  
*Commission decision with advisory procedure*  
*written procedure will be used to get the opinion of the SERAC.*  
*Vote held in the meeting of July 2014*  
*135 notifications have been received by 20.01.2014 .*

12



## **Implementing Act – example 2**

*Common principles for regulatory bodies on their practices for making decisions  
Art 57(8) of SERA Directive  
Implementing act with examination procedure  
(under no opinion clause)*

13



*Thank you for your attention*

14