

Summary to UIRR's proposed amendments to the Recast of the First Railway Package

1. Technicalities

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UIRR's proposed amendment 1 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 11 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Recital 21 a new

Draft Report of Rapporteur D Serracchiani 19.4.2011

(21a) Based on the experience of the network of regulatory bodies the Commission **should** come forward with a legislative proposal for the setting-up of a European regulatory body.

Proposal

(21a) Based on the experience of the network of regulatory bodies the Commission **may** come forward with a legislative proposal for the setting-up of a European regulatory body.

Justification

Amendment 88 (Article 57 a new) of the Rapporteur on the same topic reads "if appropriate", which corresponds to 'may' and not 'should'.

UIRR's proposed amendment 2 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 17 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 3 – point 2

Draft Report of Rapporteur D Serracchiani 19.4.2011

(2) 'infrastructure manager' means any body or firm responsible in particular for establishing , managing and maintaining railway infrastructure , including traffic management and control-command and signalling; the functions of the infrastructure manager **are**: *the decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths and the decision making on infrastructure charging, including determination and collection of the charges, and investments in infrastructure;*

Proposal

(2) 'infrastructure manager' means any body or firm responsible in particular for establishing , managing and maintaining railway infrastructure , including traffic management and control-command and signalling ; the functions of the infrastructure manager **also include**: *the decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths and the decision making on infrastructure charging, including determination and collection of the charges, and investments in infrastructure;*

Justification

The definition of the infrastructure manager 'also include' functions indicated in the first half of the definition, in addition to the ones listed after the colon.

UIRR's proposed amendment 3 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 17 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 3 – point 2

Draft Report of Rapporteur D Serracchiani 19.4.2011

5. For the purposes of the Commission's market monitoring, Member States shall supply on an annual basis the following information as indicated in Annex IV, as well as all other necessary data requested by the Commission:

- (a) the evolution of rail transport performance and compensation for Public Service Obligations (PSO);
- (b) the modal share of railway undertakings in total transport performance;
- (c) the resources and activities of regulatory bodies dedicated to their functioning as appeal bodies;
- (d) the relevant developments as regards restructuring of the incumbent railway undertaking and adoption/implementation of national transport strategies over the previous year;
- (e) the important training initiatives/measures in the field of railway transport taken in a Member State during the previous year;
- (f) the employment and the social conditions of railway undertakings and infrastructure managers at the end of the previous year;
- (g) the investments in the high-speed rail network during the previous year;
- (h) the length of the railway network at the end of the previous year;
- (i) the track access charges during the previous year;
- (j) the existence of a performance scheme set up according to Article 35 of this Directive;
- (k) the number of active licences issued by the competent national authority;
- (l) the status of ERTMS deployment;
- (m) the number of incidents, accidents and serious accidents as defined by Directive 2004/49/EC which occurred on the network during the previous year;
- (n) other relevant developments.

Proposal

5. For the purposes of the Commission's market monitoring, Member States shall supply on an annual basis the following information as indicated in Annex IV, as well as all other necessary data requested by the Commission:

- (a) the evolution of rail transport performance and compensation for Public Service Obligations (PSO);
- (b) the modal share of railway undertakings in total transport performance;
- (c) the resources and activities of regulatory bodies dedicated to their functioning as appeal bodies;
- (d) the relevant developments as regards restructuring of the incumbent railway undertaking and adoption/implementation of national transport strategies over the previous year;
- (e) the important training initiatives/measures in the field of railway transport taken in a Member State during the previous year;
- (f) the employment and the social conditions of railway undertakings and infrastructure managers at the end of the previous year;
- (g) the investments in the high-speed rail network during the previous year;
- (h) the length of the railway network at the end of the previous year;
- (i) the track access charges during the previous year ***per ton-kilometre and also in comparison with the road toll per ton-kilometre applicable to heavy goods vehicles;***
- (j) the existence of a performance scheme set up according to Article 35 of this Directive;
- (k) the number of active licences issued by the competent national authority;
- (l) the status of ERTMS deployment;
- (m) the number of incidents, accidents and serious accidents as defined by Directive 2004/49/EC which occurred on

the network during the previous year;
(n) **a projection on the foreseeable longer-term development of track access charges**
(o) other relevant developments.

Justification

Amended (i): the track access charges will only carry meaningful information if they are converted and presented in a per ton-kilometre basis, and the road toll data applicable to heavy goods vehicles is also presented alongside it on a ton-kilometre basis.

New (n): Considering that track access charges are the result of a calculation using numerous factors not (easily) predictable for railway undertakings for which track access charges form a major cost element, it is considered an invaluable business and investment planning aid to have an official projection prepared by the Member State itself, which is best positioned to foresee or control every input factor – including the amount of funding provided to the infrastructure manager – needed to make such a projection. Improved business and investment planning of railway undertakings on the other hand has direct bearing on the ability to attract capital or other forms of long-term financing essential to enhance capacities, quality of service and efficiency, all resulting in improved competition within the rail sector.

UIRR's proposed amendment 4 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 8 – paragraph 2

COM(17.9.2010) 475

2. Having due regard to Articles 93, 107 and 108 of the Treaty, Member States may also provide the infrastructure manager with financing consistent with its tasks, the size of the infrastructure and financial requirements, in particular in order to cover new investments.

Proposal

2. Having due regard to Articles 93, 107 and 108 of the Treaty, Member States may also provide the infrastructure manager with financing consistent with its tasks, the size of the infrastructure and financial requirements, in particular in order to cover new investments ***and to enable realisation of the foreseeable longer-term track access charge projections of the Member States.***

Justification

The projection of the foreseeable development of track access charges (see UIRR's proposed amendment 3 above) can only be realised in case the financial resources needed for the achievement of these projections are provided by the Member States.

UIRR's proposed amendment 5 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 58 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 27 – paragraph 2

Draft Report of Rapporteur D Serracchiani 19.4.2011

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain the following information setting out the conditions for access to the relevant railway infrastructure and to service facilities:

(a) A section setting out the **nature** of the infrastructure which is available to railway undertakings and the conditions of access to it.

(b) A section on charging principles and tariffs.

(c) A section on the principles and criteria for capacity allocation. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement.

(d) A section on information relating to the application for a licence referred to in Article 25 and rail safety certificates issued in accordance with Directive 2004/49/EC¹.

(e) A section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the performance scheme referred to in Article 35.

(f) A section on information on access to and charging for service facilities referred to in Annex III.

(g) A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.

The information in the network statement shall be annually updated and consistent with or refer to the rail infrastructure registers to be published in accordance with Article 35 of Directive 2008/57/EC.

Proposal

2. The network statement shall set out the nature of the infrastructure which is available to railway undertakings. It shall contain the following information setting out the conditions for access to the relevant railway infrastructure and to service facilities:

(a) A section setting out the **design as well as the prevailing technical parameters** of the infrastructure which is available to railway undertakings and the conditions of access to it.

(b) A section on charging principles, **including a discount extended to users of degraded or limited infrastructure elements**, and tariffs.

(c) A section on the principles and criteria for capacity allocation. Operators of service facilities which are not controlled by the infrastructure manager shall supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement.

(d) A section on information relating to the application for a licence referred to in Article 25 and rail safety certificates issued in accordance with Directive 2004/49/EC¹.

(e) A section on information about procedures for dispute resolution and appeal relating to matters of access to rail infrastructure and services and to the performance scheme referred to in Article 35.

(f) A section on information on access to and charging for service facilities referred to in Annex III.

(g) A model agreement for the conclusion of framework agreements between an infrastructure manager and an applicant in accordance with Article 42.

The information in the network statement shall be annually updated and consistent with or refer to the rail infrastructure

Infrastructure that is not appropriately maintained and its quality declining shall be reported in a timely manner to users; The information in points (a) to (g) may be amended and specified by the Commission in accordance with Annex VI in the light of experience following the procedure referred to in Article 60.

¹ OJ L 164, 30.4.2004, p. 44.

registers to be published in accordance with Article 35 of Directive 2008/57/EC. Infrastructure that is not appropriately maintained and its quality declining shall be reported in a timely manner to users; The information in points (a) to (g) may be amended and specified by the Commission in accordance with Annex VI in the light of experience following the procedure referred to in Article 60.

¹ OJ L 164, 30.4.2004, p. 44.

Justification

The “nature” of the rail infrastructure can be best described using the ‘design’ technical parameters contained in the official permit with which the actual infrastructure element was introduced into the network, as well as its ‘prevailing’ technical parameters, which may reflect limitation or degradation – speed or axle weight limitations – attributable to delayed maintenance or other causes like natural disasters, or maintenance works. The ‘official’ establishment of this data is important as the difference between ‘design’ and ‘prevailing’ technical parameters should form the basis of the track access charge discount (see point (b)) extended to those railway undertakings, which use the infrastructure element in question and suffer a reduction of productivity thereby.

UIRR's proposed amendment 6 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 29 – paragraph 2

COM(17.9.2010) 475

2. The Member States shall ensure that infrastructure managers cooperate to enable the application of **efficient** charging schemes **for** the operation of train services which cross more than one infrastructure network. Infrastructure managers shall, in particular, aim to guarantee the **optimal** competitiveness of **international** rail freight services and ensure the **efficient use** of the railway networks.

Proposal

2. The Member States shall ensure that infrastructure managers cooperate to enable the application of **structurally comparable** charging schemes **to ease** the operation of train services which cross more than one infrastructure network. Infrastructure managers shall, in particular, aim to guarantee the optimal competitiveness of **border-crossing** rail freight services and ensure the **highest possible capacity utilisation** of the railway networks.

Justification

“Structurally comparable” is a more precise formulation than “efficient”. The proposed changes improve the text by making its interpretation and implementation easier. Replacing the phrase “international” with border-crossing describes well the nature of passing from the territory (and rail network) of one Member State to another. The aim of “highest possible capacity utilisation” better describes “efficient use”.

UIRR's proposed amendment 7 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 30 – paragraph 4

COM(17.9.2010) 475

4. Infrastructure managers shall develop and maintain an inventory of assets that they manage, which shall contain their current valuation as well as details of expenditure on renewal and upgrading of the infrastructure.

Proposal

4. Infrastructure managers shall develop and maintain an inventory of assets that they manage, which shall contain their current valuation as well as details of expenditure on renewal and upgrading of the infrastructure. ***This inventory of assets should also contain the design parameters of every element of the rail network as contained in the permit allowing it into operation as well as the prevailing technical parameters of these network elements reflecting any limitations or degradation to these parameters which exist for more than twelve months.***

Justification

The inventory of assets is a useful tool not only to record data for renewal and upgrading, but also to reflect any prolonged 'limitation' or 'degradation' in the condition of the respective infrastructure elements. This would not only be useful for railway undertakings to know when planning production, but could also serve as a basis for offering a discount on the track access charges levied for the use of the respective limited or degraded segment(s) (see UIRR's proposed amendment 5 above).

UIRR's proposed amendment 8 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 31 – paragraph 4

COM(17.9.2010) 475

4. The infrastructure charges may include a charge which reflects the scarcity of capacity of the identifiable section of the infrastructure during periods of congestion.

Proposal

4. The infrastructure charges may include a charge which reflects the scarcity of capacity of the identifiable section of the infrastructure during periods of congestion. ***Capacity scarcity-related additional charges can not exceed 175(200)% of the applicable regular track access charge and may not be applied for a period longer than 5(8) hours per day per line. These capacity scarcity-related charges are not designed to generate additional revenue, hence corresponding track access charge discounts must be extended to the users of the same line in periods when no congestion is observed. Any unintended increase in revenue shall be counterbalanced by changes to the structure of the track access charges which must be implemented within one year from the end of the accounting year in which the additional revenue is generated.***

Justification

In the spirit of mode-equality in the internalisation of externalities, such as congestion, this amendment of the text is necessary to reflect the rules prescribed for the case of road traffic congestion in the presently considered amendment of the Eurovignette Directive [2006/38/EC].

UIRR's proposed amendment 9 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 63 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 32 – paragraph 1 – subparagraph 1

Draft Report of Rapporteur D Serracchiani 19.4.2011

1. In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market **can bear** this, **levy mark-ups on the basis of** efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness.

Proposal

1. In order to obtain full recovery of the costs incurred by the infrastructure manager a Member State may, if the market **demands** this, **introduce different train categories which can be charged quality** mark-ups based on **guaranteed higher levels of service defined using** efficient, transparent and non-discriminatory principles, while guaranteeing optimal competitiveness.

Justification

Pricing a product based on 'what the customer can bear' is a non-market-conform method, hence it may be deemed an unfair principle which results in a loss of competitiveness. Instead of differentiating according to "market-segments", a market-conform way of introducing mark-ups would be to link these 'surcharges' to guaranteed higher levels of (rail infrastructure) services – such as higher average speed – effectively converting them into 'quality mark-ups'. This way the track access charge increased with a 'quality' mark-up would be justified by a higher level of service related to it. Market participants (customers) could then freely choose from this supply of differing quality infrastructure services the one that suits their needs and the requirements of their clients the best resulting in truly "optimal competitiveness".

UIRR's proposed amendment 10 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 32 – paragraph 1 – subparagraph 2

COM(17.9.2010) 475

The level of charges must not, however, exclude the use of infrastructure by **market segments** which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return **which the market can bear**.

Proposal

The level of **basic track access** charges must not, however, exclude the use of infrastructure by **those railway undertakings** which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a **normal** rate of return.

Justification

The concept of pricing where applicable prices are decided based on “market segments” and ‘what the market can bear’ has been replaced with “quality mark-ups” charged in return for higher guaranteed service levels (see UIRR’s proposed amendment 9 above).

UIRR's proposed amendment 11 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 64 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 32 – paragraph 1 – subparagraph 3

Draft Report of Rapporteur D Serracchiani 19.4.2011

These **market segments** shall be established in accordance with the procedure laid down in Annex VIII, point 3.

Proposal

These **quality mark-ups** shall be established in accordance with the procedure laid down in Annex VIII, point 3.

Justification

The concept of pricing where applicable prices are decided based on “market segments” and ‘what the market can bear’ has been replaced with “quality mark-ups” charged in return for higher guaranteed service levels (see UIRR’s proposed amendment 9 above).

UIRR's proposed amendment 12 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 66 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 32 – paragraph 3 – subparagraph 1

Draft Report of Rapporteur D Serracchiani 19.4.2011

Trains equipped with the European Train Control System (ETCS) running on lines equipped with national command control and signalling systems shall enjoy a temporary reduction of the infrastructure charge in accordance with Annex VIII, point 5. ***The infrastructure manager shall be able to ensure that such a reduction does not result in a loss of revenue. This reduction shall be offset by higher charges on the same railway line for trains not equipped with ETCS.***

Proposal

Trains equipped with the European Train Control System (ETCS) running on lines equipped with national command control and signalling systems shall enjoy a temporary reduction of the infrastructure charge in accordance with Annex VIII, point 5.

Justification

The initial intention behind the Commission's draft was to achieve the Member States' additional support to aid the shift to ETCS whereby Member States would have had to make up for any potential loss of revenues of infrastructure managers related to this 'ETCS reduction' in recognition of the State's responsibility to establish an interoperable rail signalling system alike the uniform traffic control measures prevailing on Europe's roads. The Rapporteur's amendment relocates this responsibility to the railway undertakings, which is unacceptable.

UIRR's proposed amendment 13 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 33 – paragraph 2

COM(17.9.2010) 475

2. With the **exception** of paragraph 3, discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager. In determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

Proposal

2. With the **exceptions** of paragraph 3 **and Article 31 paragraph 4** discounts shall be limited to the actual saving of the administrative cost to the infrastructure manager. In determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

Justification

Coherence with UIRR's proposed amendment 8.

UIRR's proposed amendment 14 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

New amendment

Article 35 – paragraph 1

COM(17.9.2010) 475

1. Infrastructure charging schemes shall encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network through a performance scheme. This may include penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better-than-planned performance.

Proposal

1. Infrastructure charging schemes shall encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network through a performance scheme. This may include penalties for actions which disrupt the operation of the network, compensation for undertakings which suffer from disruption and bonuses that reward better-than-planned performance.
Infrastructure managers along a Corridor, as defined in the Regulation EC 913/2010, should aim to harmonise their performance schemes also involving the network of Regulatory Bodies.

Justification

Performance schemes applicable along Corridors as defined in Regulation EC 913/2010 concerning a European rail network for competitive freight should be harmonised and the infrastructure managers should collaborate during its implementation to make the performance scheme meaningful and relevant.

UIRR's proposed amendment 15 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 68 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 35 – paragraph 2 – subparagraph 1

Draft Report of Rapporteur D Serracchiani 19.4.2011

The basic principles of the performance scheme include the following elements which shall apply throughout the network:

(a) In order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the cost of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time;

(b) The infrastructure manager shall communicate to the railway undertakings the timetable, on the basis of which delays will be calculated, at least five days before the train run;

(c) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.

(d) Once a year, the infrastructure manager shall publish the annual average level of service quality **achieved by the railway undertakings** on the basis of the main parameters agreed in the performance scheme.

Proposal

The basic principles of the performance scheme include the following elements which shall apply throughout the network:

(a) In order to achieve an agreed level of service quality and not to endanger the economic viability of a service, the infrastructure manager shall agree with applicants, after approval by the regulatory body, the main parameters of the performance scheme, in particular the cost of delays, the thresholds for payments due under the performance scheme relative both to individual train runs and to all train runs of a railway undertaking in a given period of time;

(b) The infrastructure manager shall communicate to the railway undertakings the timetable, on the basis of which delays will be calculated, at least five days before the train run;

(c) Without prejudice to the existing appeal procedures and to the provisions of Article 50, in case of disputes relating to the performance scheme, a dispute resolution system shall be made available in order to settle such matters promptly. If this system is applied, a decision shall be reached within a time limit of 10 working days.

(d) Once a year, the infrastructure manager shall publish the annual average level of service quality **per train category** on the basis of the main parameters agreed in the performance scheme.

Justification

Collection and publication of data on the service quality performance of its client railway undertakings by the infrastructure manager should not be allowed; rather service quality performance data should be compiled and reported based on the types of trains.

UIRR's proposed amendment 16 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 78 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 56 – paragraph 3 a (new)

Draft Report of Rapporteur D Serracchiani 19.4.2011

3a. The regulatory body shall verify that railway undertakings' and infrastructure managers' accounting is in compliance with the accounting separation provisions laid down in Article 6.

Proposal

3a. The regulatory body shall verify that railway undertakings' and infrastructure managers' accounting is in compliance with the accounting separation provisions laid down in Article 6. ***The Auditor of the relevant railway undertakings' and infrastructure managers' books should be required to express their opinions on the status of this separation within their annual reporting.***

Justification

The proposed addition to the rule should aid the regulatory bodies' verification efforts. Moreover, the auditors' reports are typically made public which would contribute effectively to the much needed increase of transparency within the sector.

UIRR's proposed amendment 17 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 82 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 56 a (new)

Draft Report of Rapporteur D Serracchiani 19.4.2011

Article 56a

Powers of the regulatory body

1. In order to carry out the tasks listed in Article 56 the regulatory body shall have the power to:
 - (a) enforce its decisions with appropriate sanctions, including fines. A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another administrative instance.
 - (b) request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned and to enforce such requests with appropriate sanctions, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring competition in the rail services markets. This includes data which are necessary for statistical and market observation purposes. Information requested must be supplied without undue delay.
 - (c) carry out audits or initiate external audits with infrastructure managers and, when relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6.
2. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. ***The appeal shall not have a suspensive effect on the decision of the regulatory body.***
3. Member States shall ensure that decisions of the regulatory body are published.

Proposal

Article 56a

Powers of the regulatory body

1. In order to carry out the tasks listed in Article 56 the regulatory body shall have the power to:
 - (a) enforce its decisions with appropriate sanctions, including fines. A decision of the regulatory body shall be binding on all parties covered by that decision, and shall not be subject to the control of another administrative instance.
 - (b) request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned and to enforce such requests with appropriate sanctions, including fines. Information to be supplied to the regulatory body includes all data which the regulatory body requires in the framework of its appeal function and in its function of monitoring competition in the rail services markets. This includes data which are necessary for statistical and market observation purposes. Information requested must be supplied without undue delay.
 - (c) carry out audits or initiate external audits with infrastructure managers and, when relevant, railway undertakings, to verify compliance with accounting separation provisions laid down in Article 6.
2. Member States shall ensure that decisions taken by the regulatory body are subject to judicial review. ***The first motion of the appeal should be to decide whether the appealed decision of the regulatory body should be suspended for the period of the judicial review.***
3. Member States shall ensure that decisions of the regulatory body are published.

Justification

The blanket waiver of the suspensive effect of an appeal is not justified, especially for instance in the case of a decision requiring the payment of a substantial fine that could potentially result in the liquidation of the party covered by the decision. Assumption of innocence until the appeals process is concluded should in principle be upheld.

UIRR's proposed amendment 18 of 18

Proposal for a directive [COM(2010)0475 – C7-0268/2010 – 2010/0253(COD)]

Amendment 121 of Draft Report of Rapporteur D Serracchiani 19.4.2011

Annex VIII – paragraph 3

Draft Report of Rapporteur D Serracchiani 19.4.2011

3. The infrastructure manager shall demonstrate to the regulatory body the **ability of a train service to pay** mark-ups according to Article 32(1). In case the infrastructure manager **levies** mark-ups, it shall develop a list of **market segments** to which the regulatory body shall give its prior approval.

Proposal

3. The infrastructure manager shall demonstrate to the regulatory body the **viability of quality** mark-ups, **including evidence how they serve optimal competitiveness, and proof that the basic track access charge will not cause the unwanted exclusion of any railway undertaking** according to Article 32(1). In case the infrastructure manager **offers quality** mark-ups, it shall develop a list of **related quality benchmarks** to which the regulatory body shall give its prior approval.

Justification

Coherence with UIRR's recommended amendments 9 and 10 above.