

BACKGROUND: EUROPEAN RAILWAY REGULATION

I. OVERVIEW OF THE LEGAL ACTS OF EUROPEAN RAILWAY REGULATION

The European legal framework for railway regulation is meant to further the integration of national railway systems and to strengthen the competitiveness of the railway sector over other modes of transport. First legislative acts have been enacted in the 1990s. The railway regulatory framework consists of so-called „Railway Packages“, which, to a certain extent, build upon one another:

1. Railway Package	2. Railway Package	3. Railway Package	4. Railway Package
Dir. 2001/12/EC	Dir. 2004/49/EC	Reg. (EC) 1370/2007	COM(2013) 26: repealing Reg. (EEC) 1192/69
Dir. 2001/13/EC	Dir. 2004/50/EC	Reg. (EC) 1371/2007	COM(2013) 27: replacing Reg. (EC) 881/2004
Dir. 2001/14/EC	Dir. 2004/51/EC	Dir. 2007/58/EC	COM(2013) 28: amending Dir. (EC) 1370/2007
Dir. 2012/34/EC ("Recast")	Reg. (EC) 881/2004	Dir. 2007/59/EC	COM(2013) 29: amending Dir. 2012/34/EC
			COM(2013) 30: recasting Dir. 2008/57
			COM(2013) 31: amending Dir. 2004/49/EC

► First Railway Package of 2001

- Directive amending Directive 91/440/EEC on the development of the Community's railways ([2001/12/EC](#)):
 - Railway undertakings will gradually be granted access to the Trans-European Rail Freight Network for the international transport of goods and to the entire network of international freight services.
 - Monitoring of access rights is assigned to national regulatory bodies.
- Directive amending Directive 95/18/EC on the licensing of railway undertakings ([2001/13/EC](#)):
 - A common, EU-wide licensing scheme is implemented.
 - Licenses issued by other Member States are recognized.
- Directive on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ([2001/14/EC](#)):
 - Railway infrastructure managers levy charges for the use of railway infrastructure and allocate railway infrastructure capacity.
 - Access for railway undertakings to the railway infrastructure should be non-discriminatory.

► Second Railway Package of 2004

- Railway Safety Directive ([2004/49/EC](#)):
 - Common safety targets (CST) and common safety methods (CSM) have to be developed to harmonize national safety rules and standards.
 - A safety authority and a body to investigate accidents and other incidents in railway transport should be set up in all Member States.
- Directive amending Directive 96/48/EC on the interoperability of the Trans-European high-speed rail system and Directive 2001/16/EC on the interoperability of the trans-European conventional rail system ([2004/50/EC](#)):
 - Interoperability of the Trans-European high speed rail system should be achieved by the regulation of design, construction, placing in service, upgrading, renewal, operation and maintenance.
 - "Technical specifications for interoperability" (TSI) are being laid out for each subsystem.

- Directive amending the Directive 91/440/EEC on the development of the Community's railways ([2004/51/EC](#)):
Railway undertakings are granted access rights to the Rail Freight Network both for domestic and international rail freight services.
- Regulation establishing a European railway agency [[EC 881/2004](#)]:
 - A European Railway Agency (ERA) is established in order to realize the interoperability and safety in the European railway system by technical expertise.
 - ERA will submit recommendations to the Commission and issue opinions to the Member States.

► **Third Railway Package of 2007**

- Regulation on public passenger transport services by rail and by road and repealing Regulations (EEC) Nos 1191/69 and 1107/70 [[EC 1370/2007](#)]:
 - The Regulation regulates the award of public service contracts in public passenger transport by rail and road and the compensation for public service obligations.
 - Several exemptions permit the direct award of public service contracts.
- Regulation on rail passengers' rights and obligations [[EC 1371/2007](#)]:
The Regulation regulates the conclusions of transport contracts, the railway undertakings' liability for lost luggage and passenger rights concerning delays.
- Directive amending the Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure ([2007/58/EC](#)):
Railway undertakings gain access to international rail passenger transport services.
- Directive on the certification of train drivers operating locomotives and trains on the railway system in the Community ([2007/59/EC](#)):
The conditions and procedures for the certification of train drivers („locomotive drivers license“) are regulated in a uniform EU-wide manner.

► **Recast of the First Railway Package in 2012**

- Directive on establishing a single European railway area (Recast) ([2012/34/EC](#); see [cepPolicy Brief](#)):
The recast aims at eliminating gaps and shortcomings of legislative acts of the First Railway Package.

► **Fourth Railway Package of 2013**

- Proposal for a Regulation on repealing Regulation (EEC) No 1192/69 on common rules for the normalization of the accounts of railway undertakings [[COM\(2013\) 26](#)]:
 - Regulation (EEC) Nr. 1192/69 allows Member States to compensate 36 enumerated railway undertakings for the payment of obligations such as family allowances and pensions.
 - Due to the liberalization of the European rail market starting in the 1990s, the regulation is incompatible with European state aid rules.
- Proposal for a Regulation on the European Union Agency for Railways and repealing Regulation (EC) 881/2004 [[COM\(2013\) 27](#)]:
 - The European Railway Agency (ERA) should receive new tasks such as issuing authorizations for placing vehicles on the market and reinforced control over national agencies.
 - Clarifications of existing provisions for the European Rail Traffic Management System (ERTMS) and railway staff are intended.
- Proposal for a Regulation amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail [[COM\(2013\) 28](#)]:
 - EU-wide concept for procurement in rail passenger transport should be established.
 - Mandatory competitive tendering for public service contracts and upper limits for the direct award of small volume contracts in rail transport are being introduced.
- Proposal for a Directive amending Directive 2012/34/EU on establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure [[COM\(2013\) 29](#)]:
 - Domestic markets for passenger transport services should be opened as to improve them through competition.
 - Governance of infrastructure managers should be improved to ensure equal access to infrastructure.

- Proposal for a Directive on the interoperability of the rail system within the European Union (Recast) [\[COM\(2013\) 30\]](#):
 - Directive 2008/57/EC should be amended.
 - The authorization for placing vehicles on the market should be revised with the rules for „technical specifications for interoperability“ (TSI).
- Proposal for a Directive on railway safety (Recast) [\[COM\(2013\) 31\]](#):
 - Directive 2004/49/EC should be amended.
 - A single Community safety certificate for railway undertakings should be adopted and responsibilities between national safety authorities and the ERA should be reallocated.

II. PRIORITY GOAL: SINGLE EUROPEAN MARKET WITH COMPETITION FOR RAIL TRANSPORT

Past Liberalization Measures

To date rail freight transport (Directive 2004/51/EC) and international rail passenger transport (Directive 2007/58/EC) have been liberalized EU-wide. Solely national rail passenger transport has been exempted from any EU-liberalization, but is meant to be liberalized by the proposed Directive COM(2013) 29. Some Member States (e.g. Germany) have already enacted legislation on the liberalization of national rail passenger markets.

Aim of the Recast of the First Railway Package: Non-discriminatory competition

The revision of the First Railway Package (Recast) was intended by the Commission to eliminate existing gaps and shortcomings in the regulatory framework. It was especially intended to allow for a non-discriminatory competition in the rail transport market. The Recast includes the removal of barriers to competition, the reform of regulatory supervision and the expansion and operation of the railway infrastructure. The recast has come into effect in December 2012 and must be implemented by the Member States by June 2015.

ECJ Judgment February 28th, 2013 (case C-556/10): poor implementation of the First Railway Package?

In 2010, the Commission brought 13 Member States before the European Court of Justice (ECJ) for the poor implementation of the First Railway Package. According to the Commission, these Member States, each for different reasons, violate current EU law through the inadequate implementation of the regulation on the levying of infrastructure charges or the missing of an independent regulatory body. Germany was accused, inter alia, that the rules on the independence of infrastructure managers were inadequate. On February 28th, 2013, the ECJ dismissed action against Germany. It ruled that the Commission had not submitted any evidence for the infrastructure manager „DB Netz“ being dependent in its decision-making on the holding „DB AG“ (s. [ECJ judgment](#), case C-556/10, recital 67 – European Commission vs. Germany).

Aim of the Fourth Railway Package: internal rail market

In its Communication [COM(2013) 25, p. 3], accompanying the Commission’s proposal on the Fourth Railway Package, the Commission criticizes the low share of rail transport in all other modes of transport. As to raise the competitiveness of rail transport as compared to other modes of transport and to create a European single market for rail transport, it deems the Fourth Railway Package to be necessary. According to the Commission, the Fourth Railway Package is intended to remove any legal, institutional and technical obstacle to rail traffic.

III. FURTHER REGULATORY ISSUES

International rail corridors

According to Regulation (EU) No 913/2010, concerning a European rail network for competitive freight (for the Commission’s proposal and the changes made within the legislative procedure see [cepPolicy Brief](#) and [cepMonitor](#)), Member States are bound to cooperate with infrastructure managers at international rail corridors, especially on creating a One-Stop-Shop for the applicants for infrastructure capacity.

European Train Control System (ETCS)

The European Train Control System (ETCS) is available in different versions (levels 0 to 3). Together with the mobile rail radio system (GSM-R), it forms the European Rail Traffic Management System (ERTMS). The ERTMS is meant to unify the command and control system, especially to facilitate cross-border rail traffic and to better utilize infrastructure capacity. However, there are still compatibility problems within the ERTMS, even on the same rail corridors incompatible versions of the ETCS are used. The German Federal Government has yet tried

to finance and introduce Specific Transmission Modules (STM) for locomotives instead of refitting the ERTMS. Currently, the Federal Government has decided to refit rail corridors with ERTMS from 2018 on.