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European Union

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**TRANS 347**

**COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 September 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2017) 5963 final
Subject:	COMMISSION DELEGATED DECISION (EU) .../... of 4.9.2017 replacing Annex VII to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area

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Delegations will find attached document C(2017) 5963 final.

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Encl.: C(2017) 5963 final



Brussels, 4.9.2017  
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**COMMISSION DELEGATED DECISION (EU) .../...**

**of 4.9.2017**

**replacing Annex VII to Directive 2012/34/EU of the European Parliament and of the  
Council establishing a single European railway area**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

The act aims at a better use of the available rail infrastructure by increasing the flexibility and the predictability of timetabling and reducing the need to amend train paths once allocated, in particular for cross border train services. Railway infrastructure is essential for the provision of rail transport services, the capacity of which the infrastructure manager has to allocate on a non-discriminatory basis.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The matter has been consulted at the level of the Railway Undertakings' Dialogue and with infrastructure managers at the PRIME meetings in 2016. The Expert Group on Rail Market Access discussed draft versions of the act at two dedicated one day meetings in autumn 2016. The European Parliament was invited. RailNetEurope, the association of infrastructure managers for cooperation as regards capacity allocation, consulted its members and shared the conclusions with Commission services in January 2017. The text was submitted to public consultation open for four weeks, from 17 March to 14 April 2017. Those various consultations triggered 31 responses. The comments received were collected, analysed and answered at a third meeting of the Expert Group on Rail Market Access held on 23 June 2017. The European Parliament was invited and the Council secretariat attended that meeting. The minutes of the meetings of the Expert Group were published after each round of consultation, taking comments into account where appropriate.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The act pursues the three following objectives: (1) it provides for a procedure to request and allocate infrastructure capacity between the end of the annual application period and the change of the timetable in December; (2) it requests infrastructure managers to consult with applicants before blocking capacity for maintenance of their tracks; (3) it prohibits certain practices of bad treatment of trains crossing different networks, notably at internal EU borders.

# **COMMISSION DELEGATED DECISION (EU) .../...**

**of 4.9.2017**

**replacing Annex VII to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area<sup>1</sup>, and in particular Article 43(2) thereof,

Whereas:

- (1) The procedures for capacity allocation should be made transparent, while taking into account the efficiency of the allocation process as well as the operational concerns of all stakeholders concerned with the use and the maintenance of rail infrastructure.
- (2) Applicants for the allocation of infrastructure capacity should be able to submit requests for the incorporation of capacity into the annual working timetable between the deadline for requests to the draft timetable and before the change of the working timetable.
- (3) Once the train paths are allocated, the contractual rights of the applicant would include a right to reject or approve a request for rescheduling made by the infrastructure manager
- (4) Temporary capacity restrictions are necessary to keep the infrastructure and its equipment in good condition and to allow infrastructure development in accordance with market needs.
- (5) Applicants should receive early information on upcoming capacity restrictions allowing them to adapt their operations and transport needs in accordance with restrictions in infrastructure capacity. If information on upcoming capacity restrictions is already published at the beginning of the period for submitting requests for the incorporation of capacity into the annual timetable, there should be less need to reschedule already allocated trains paths.

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<sup>1</sup> OJ L 343, 14.12.2012, p. 32.

- (6) Infrastructure managers should not only take into account their own costs when choosing between different alternatives of capacity restrictions, but also the commercial and operational constraints of the applicants concerned and the risks of transport being shifted to less environmentally friendly modes of transport.
- (7) Infrastructure managers should establish, publish and apply transparent criteria as regards the diversion of trains and the allocation of a restricted capacity to different types of traffic. They might do so jointly or individually for their capacity restrictions.
- (8) Infrastructure managers should adapt their network statements and timetabling procedures to ensure timely compliance with the new rules on capacity restrictions as introduced by this Decision.
- (9) As regards train operations crossing more than one network, the infrastructure managers concerned should coordinate to minimise impact of capacity restrictions on the traffic and to synchronise works on a given route or avoid restricting capacity on a diversionary route.
- (10) For reasons of legal clarity and taking into account the number of amendments that need to be made in Annex VII to Directive 2012/34/EU, that Annex should be replaced in its entirety. Moreover, in order to simplify the regulatory framework, a Delegated Decision is the appropriate legal instrument as it imposes clear and detailed rules which do not require transposition by Member States ensuring rapid uniform implementation throughout the Union.
- (11) As a result of the timing of the change of the working timetable in accordance with point (2) of the Annex to this Decision and the lead times for coordination, consultation and publication of capacity restrictions set out in points (8) to (11) of the Annex to this Decision, infrastructure managers will only be able to comply for the first time with the requirements of points (8) to (11) for the change of the working timetable taking effect in December 2019 as regards the second round of publication and December 2020 as regards the first round of publication, with the requirements of point (12) for the change of the working timetable to take effect in December 2018 and with the requirements of points (14) to (17) for the change of the working timetable to take effect in December 2018.
- (12) Directive 2012/34/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Annex VII to Directive 2012/34/EU is replaced by the text in the Annex to this Decision.

#### *Article 2*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 4.9.2017

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*