

POSITION PAPER

Implementation of the Recast - 'Conditions of access to services' - Article 13

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COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES - COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE - GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN



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1. Introduction

In view of the intention of the European Commission (DG MOVE) to start the implementation of Article 13 of the Recast 'Conditions of access to services', the Community of European Railway and Infrastructure Companies (CER) would like to draw attention to some concerns related to this early attempt at implementing the aforementioned article before the end of the transposition period of the entire Recast.

The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 members - European railway undertakings, their national associations as well as infrastructure companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises. CER members represent about 61% of the rail network length, more than 84% of the rail freight business and about 99% of rail passenger operations in EU, EFTA and EU accession countries.

CER attaches high importance to the work undertaken by the European Commission together with the SERAC and is supportive of an efficient implementation of the Recast. CER also appreciates the efforts put by all parties involved into the preparation of the Commission implementing regulations. It is with the objective of bringing positive impetus to the rail market that CER would like to raise its concerns regarding the implementation of Article 13.

2. Need for experience

Access to service facilities is a key element for railway undertakings in order to develop their business, therefore its effective regulation should be foreseen by European and National Law.

CER does not oppose an implementation of Article 13 Recast should it be needed but considers action at this stage to be **premature**. Paragraph 9 of Article 13 Recast makes clear that it does not oblige the European Commission to produce an implementation regulation and, when assessing the necessity of implementation, the European Commission must take into account the experience of regulatory bodies and operators of service facilities.

As mentioned above, the Recast is not yet transposed into national law, hence operators of service facilities and applicants are not yet able to base their contractual relations on the rules enacted in Article 13 Recast. Moreover, until Member States have finalized the aforementioned transposition, regulatory bodies or national courts will not be able to apply these rules to solve conflicts on the use of service facilities. Since the currently applicable rules in such cases are not the ones that will be applied once the transposition is over, existing cases implying access to service facilities in Europe cannot be fully taken into consideration by the European Commission or any other interested party to justify issuing an implementation regulation at this moment in time. The legal context before and after the Recast transposition is substantially different, leaving all cases before the transposition out of the scope of this implementation.

3. Other instrument for clarification

Furthermore, CER questions whether a ‘need for clarification’ is an appropriate justification for an early implementation of Article 13. For transparency, and to justify the new regulation, CER asks the Commission to indicate which Member States, Regulatory bodies or operators of service facilities have asked for this clarification. CER has not identified a clear will from any interested parties, including Member States, or an immediate and stringent need for clarification through implementing measures.

In preference to an Implementing Act, the European Commission and regulatory bodies could use Article 57 Recast, which allows the European Commission- as a member of the network of regulatory bodies- to formulate recommendations such as ‘*Best Practices*’ on the interpretation of the rules enacted in the Recast.

The time frame needed at national level to take transposition measures and acquire experience on the application of the rules enacted in Article 13 could be used by the European Commission to initiate a common approach for the network of regulatory bodies foreseen in Article 57.8 Recast, in order to identify through the network items that should be part of possible guidelines foreseen by this provision.

4. Conclusion

CER suggests that the European Commission postpone the preparation of an implementing act, and instead allow the Member States time to implement the Directive and to resolve any issues through the network of regulatory bodies. The need for an implementing act could be reviewed once the experience gained from the application of Article 13 Recast is available and can be assessed in depth.

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