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POSITION PAPER

ETCS-Related Track Access Charges

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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

CER aisbl Avenue des Arts, 53 B-1000 Bruxelles Tel: +32 2 213 08 70 Fax: +32 2 512 52 31 contact@cer.be www.cer.be

CORE POSITION STATEMENT

Article 32 (4) of Directive 2012/34/EU (Recast Directive) foresees the introduction of a differentiation of track access charges in order to give incentives to equip trains with the European Train Control System (ETCS). This provision calls for an implementing measure from the European Commission following an Impact Assessment.

CER believes that negative impacts on inter- and intra-modal competition must be avoided, and that an efficient and coordinated deployment of ETCS on track and on board the train is essential. In that context, the Impact Assessment that the European Commission will prepare should play an important role in identifying the best options.

To the extent that differentiation of track access charges to incentivise ETCS adoption would apply, CER stresses the need to ensure that such differentiation would be as cost-effective, as predictable, and as transparent as possible.

Furthermore CER believes that the European Union should play an active role as the benefits of accelerating ERTMS deployment in the corridors can't always be found at individual national level whereas the emergence of the single railway area is really a case for EU funding.

The differentiation mechanism, where it applies, should have a limited and minor effect on the overall level of track access charges for the affected railway undertakings.

A significant differentiation might affect the competition not only between rail and other transport modes, but also between railway operators: operators unable to overcome the funding barrier early in the period would suffer a significant loss of competitiveness against equipped operators, leading to a high risk of bankruptcy and/or market exit.

In addition, the rail sector itself might suffer a competitive disadvantage due to the obligation to invest in technology of which the cost and benefits are not always clear and may depend on the timeline of the decommissioning of the legacy system. Moreover, considering the known prices to retrofit a train with ETCS, a differentiation of track access charges, even over a long period of time, will not cover all the cost of the rolling stock owner. **Hence, the recast can only be seen as an "add on" measure for retrofitting the trains.**

<u>Anything other than a fully externally funded bonus would penalise at least some railway undertakings compared to the baseline case without ETCS differentiation</u>

A differentiation system based <u>only</u> on increased levels of charges for non-equipped trains ("penalty system" or "malus system") would not be justified because the differentiation would then result in a change of revenue for the infrastructure manager. In addition, a malus system would create a loss of competitiveness for the rail sector: due to higher track access charges, other things equal, rail would get a worse position compared to other transport modes, leading railway volumes to decrease. Indeed, the consequence of the differentiation system could be a reduction of the rail traffic rather than a retrofitting incentive. That's why this system should be applied on a case by case basis (eg line by line) by taking into account the condition of intermodal competition. In addition, a late on board ETCS deployment should not be considered as an infringement that should be penalised in particular because certain reasons for a delay are not under the control of the rolling stock owner (see annex 2).

A pure sector-funded bonus-malus system would also create a loss of competitiveness for the rail sector and might not lead to the expected benefits, as such a system will hardly be predictable. The system would require adjustment of its levels over time in order to ensure revenue neutrality for infrastructure managers–. Operators however need to be able to predict future levels of the incentive at the beginning of the lifetime of the scheme in order to be able to carry out relevant evaluations (business case preparation, including estimated returns on investment). Out of the administrative burden it can generate, the real impact of such an incentive can't be assessed ex ante, neither for the infrastructure manager nor the railway undertaking.

A pure, externally funded, bonus system is the only reasonable mechanism if (as is the case) a strict revenue neutrality must be ensured for the Infrastructure manager. Anyhow this revenue neutrality for the IM shall include the additional costs resulting from building up or adapting the IT-systems or other tools in order to guarantee a cost-neutral operation of this bonus system for the IM. The need to ensure that there is no loss in rail competitiveness also means that the expenditure needed for the bonus scheme must be fully compensated by new public grants from EU or MS. Such a mechanism would then be perceived as a positive incentive and could help to accelerate the deployment of ETCS on board vehicles, whether through retrofitting or newly equipped vehicles.

In addition, the rolling stock owner is not always the operating company. Therefore, any differentiation has to carefully consider the split of incentives as the track access charge differentiation affects the operator of the vehicle whereas the decision to retrofit is taken by the owner.

Finally, to reduce risks and complexity, the incentives re should not be considered state aid.

Depending on national ERTMS deployment plan and railway financing, Members states should be free to opt out the differentiation.

Track access charge differentiation for ETCS should only be considered as an additional tool to facilitate ERTMS deployment. IMs / MSs shall be able not to apply it if the mechanism interferes with existing incentives schemes at national level or, considering the national deployment plan, such a differentiation does not (positively) impact the retrofitting program. Indeed, ERTMS deployment is insufficiently coordinated at European level to predict when smooth operations will be possible with an ETCS train running on the total length of one of the corridors. Considering the missing information about the time to achieve the trackside and on board migration, as well as the missing overview of different track access charge mechanisms across member states, a single mechanism harmonised at European level would have negative impacts. Nevertheless, the European Commission should ensure that national mechanisms do not cause distortions to competition, with particular attention to cross border traffic.

In other words, the implementing act should offer different options to implement track access charges differentiation. Member States should be free to define the spatial scope of application according to their national migration plans given that:

- If it is implemented, the start date adopted for the mechanism :
  - Should respect the deadline for network statements (communication from IM to RUs and regulatory body on the future charges);
  - Shall respect the calendar for the preparation for the contractual agreements between IM and MSs (see recast article 30(2)) – or whatever is necessary to secure funding for the measure and, if necessary, to secure the ETCS trackside deployment.
  - Should be linked with the maturity of ETCS : retrofiting trains with final ETCS versions would be efficient, i.e. train owners have to be sure that the retrofitting is definite. Thus, the differentiation should only apply when there is certainty in this regard.
- The mechanism must be limited in time in some way and not open ended.
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IMs and/or MSs may decide to adapt the mechanism step by step (level of the incentive, spatial scope) in order to secure the effectiveness of the measure. In any case, national rail services may be kept out of scope, in order to not overburden segments of transport that do not benefit from the interoperability of the ERTMS signalling system.

Even if there should be a flexible design of national mechanism, CER would still welcome an active role of Member states to ensure that the deadlines of the ERTMS deployment plan are fulfilled.

ANNEX: BACKGROUND ANALYSIS

1. LEGAL BASIS AND BACKGROUND

Article 32 (4) of Directive 2012/34/EU (Recast Directive) foresees the introduction of a differentiation of track access charges in order to give incentives to equip trains with the European Train Control System (ETCS). This provision calls for an implementing measure from the European Commission following an Impact Assessment.

Article 32(4) states furthermore that the differentiation of track access charges it foresees:

- Should not result in a change of revenue for the infrastructure manager
- Should not distort competition between railway undertakings
- Should not damage the competitiveness of rail

The article also does not explicitly state that the differentiation must be a 'bonus-malus' differentiation of the charge only on designated parts of the infrastructure, nor that it must apply only to relevant trains. A differentiation that would somehow apply to the entire network and/or the entire vehicle fleet is therefore not ruled out ex-ante. Also, the provision does not rule out the possibility of funding or co-funding or loans or other support measures from state authorities, whether this may come from EU, national, or sub-national sources, again provided that such support measures do not distort competition in the sector or damage the competitiveness of the sector. CER therefore considers that there is a fair degree of flexibility in how the provision may be implemented and that work towards a possible Implementing Measure should reflect this flexibility.

2. ISSUES PREVENTING THE CURRENT RETROFIT OF TRAINS WITH ETCS

Retrofitting an existing vehicle with ETCS is costly, with the vast majority of cases in a range of 360 k€ to 1000 k€ for a locomotive, and between 400 k€ and 1600 k€ for a train set. In both cases this represents a significant share of the residual value of the rolling stock.

- This includes large fixed non-recurrent costs related to the type of train (notably design and vehicle authorisation)
- For such works the market has a significant power as a result of:
    - high asset specificity (on-board ERTMS solutions are not interchangeable, neither between vehicle types nor between suppliers)
    - an oligopolistic supply side
    - various technical lock-in effects which bind specific manufacturers to specific train types, and results in large price differences
- In case of a large wave of retrofitting orders, capacity constraints with respect to testing and design facilities could have inflationary effects

The payback accruing to an RU from retrofitting a vehicle with ETCS, replacing a single legacy system, is likely to be negligible or even negative, and also be spread over a long period of time. In a number of cases, lack of interoperability is caused by other factors, so that opting for ETCS would have no interoperability benefit other things equal.

As a result, the private returns on investment estimated by RUs would typically be negative, as well as rather uncertain. In case installing ETCS would avoid a need to install multiple on-board legacy systems the return on investment may be positive

Retrofitting is therefore an unlikely choice for an RU in a majority of cases unless significant additional incentives are put in place. Small RUs are especially unlikely to be able to make the relevant investments due to financing constraints
Funding mechanism are also needed to upgrade vehicles already equipped with ERTMS. A rolling stock owner should not be penalised for having invested in an ERTMS version which can not be used due to incompatibilities.

In order to minimise inefficiencies resulting from timelines for the removal of legacy systems that do not respect the remaining life-time of vehicles nor developments in other Member States, CER welcomes an active role of the Commission in ensuring a revision of the deployment plans that would take into consideration both operational and investment needs.

Disclaimer

Community of European Railway and Infrastructure Companies (CER) AISBL

Avenue des Arts 53
B-1000 Brussels
Belgium

Tel +32 2 213 08 70
Fax +32 2 512 52 31
contact@cer.be

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