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THE LIBERATISATION OF THE RAILWAYS IN EUROPE*

CONTENTS: 1. The European policy for the railways. 2. The privatisation of the railways in the Member States. The British, French, German, Dutch and Swedish experiences in reforming the railways. 3. The privatisation of the railway in Italy. 4. Conclusions.

1. It is certainly high time to talk about policy for the railways not only in the Russian Federation but also in Europe, where the railways are a vital part of the Community transport sector and need to be promoted and revitalised, especially considering the increasing air-traffic and railroad congestion, the environmental problems, the traffic noise, the accidents and the growing opposition to the unchecked development of new road infrastructure.

Rail transport started in the first half of the 19th century and soon developed itself so much that it became the primary means of transport by the beginning of the 20th century.

Lately, though, with the advent of motor vehicles, it started to lose more and more share of the market, especially after the Second World War. Today the railways’ share of the passenger market is no more than 6%: for example, the average German takes the train just twice a year. The rail’s share of the freight market is nowadays 15% but it is estimated that it will drop

down to 9% in the next 10 years. Twenty years ago the figure was of 35-40%.  

Moreover, the European railway sector has already lost around half a million jobs in the last twenty years: employment has fallen by over one third in ten years, from 1.55 million in 1985 to 1.05 million in 1994 and is to decline even more in the future.  

As a matter of fact, European railways haven’t been able to meet the demand of a highly competitive international market facing now globalisation.

The European Union has analysed the reasons of this crisis in depth. In general, all the studies carried out have pointed out the unsuitableness of the old model of railway’s organisation, I mean, that of the 50’s, characterised in all European countries by a complete State monopoly and financial dependence on the State, by a culture in the railway that was not business orientated at all, by a system of internal recruitment and bad engineering.

Any business run this way wouldn’t have survived competition, and railway is no different to any other business. It is therefore important to define the role of the State and the role of the railway as a commercial business.

The first important measure taken by the European Community to develop European rail transport dates back to 1991. It is Directive 91/440/EEC of 29 July 1991 on the development of the Com-


The Directive applies to the management of railway infrastructure and to rail transport activities carried out by railways undertakings established or to be established in a Member State, except for those providing solely urban, suburban or regional services (art. 2).

The directive's main aim is to create a framework for the development of railway undertakings that operate in a commercial manner and adapt to the needs of the market so that the railway sector will integrate into the competitive transport market. This is to be reached through:

1) the management independence of railway undertakings (artt. 4-5). This means that the railways should be established as separate organisations, usually publicly owned companies distinct from the State, with a high degree of autonomy from government intervention. In a word: railways must be separated institutions from the State;

2) the separation between infrastructure management and transport operations, the separation of both profit and loss


6. In particular, paragraphs 4, 5 and 6 of art. 7 deal with infrastructure managers requiring their independent status from the State as regard management, administration and internal control over administrative, economic and accounting matters. Business plans shall be drawn up for infrastructure managers in
accounts and of balance sheets and the award to an independent body or undertakings of responsibility for those functions determin-ant for equitable and non-discriminatory access to infrastruc-ture being compulsory, and the organisational or institutional separation of other functions being optional (artt. 6-8).

The separation of the accounts is essential. First of all, for the sake of furthering efficient operation of two different but linked activities by clarifying the financial results of each. Secondary, the separation of accounts makes the use of public money more transparent, as Member States aid the railways financially in different ways and for different purposes, and finally to identify clearly the costs and the revenues in order to create a solid foundation for infrastructure charges.

However the Commission’s Report on the implementation and impact of Directive 91/440/EEC found out that in practice accounts had not been separated fully, except for the railways which have been divided into separate entities;

order to achieve their financial balance and to ensure the optimal and efficient use and the development of infrastructure. Besides, infrastructure managers shall be free to establish their internal organisation, take decisions on staff and own procurement, manage their own assets as efficiently as possible, develop new technologies and new services and adopt any innovative management techniques.

Art. 7 (paragraph 1) underlines also that Member States should take all necessary measures for the development and the safe use of their national railway’s infrastructure taking into account, where necessary, the general needs of the Community. Therefore, the laying down and enforcement of safety standards and rules shall be carried out by independent bodies or undertakings that themselves do not provide rail transport services, so that an equitable and non-discriminatory access to infrastructure is guaranteed.

7. In fact, art. 14 of Directive 91/440/EEC states that “before 1 January 1995, the Commission shall submit to the Council a report on the implementation of this Directive accompanied, if necessary, by suitable proposals on continuing Community action to develop railways, in particular in the field of the international transport of goods”.

8. Only half of the Member States have now a company managing infrastructure and a company for transport operations; in some other Member States there is one company organised in different business units. Cf. JOHN WILSON, cit., p. 49.
3) the reduction of the railway debts and improvement of their financial management. In particular, separate profit and loss accounts and balance sheets shall be kept and published for business relating to the provision of passenger transport services and for business relating to the provision of freight transport services. Funds paid to each of these two areas of activity shall be shown separately in the relevant accounts and shall not be transferred to the other (art. 9). In fact, passenger transport differs very much from freight transport as in the former public services play a major role, and compensation from the State represents a large part of the railways’ income, while in the latter demands come directly from individual customers, and the State is not intervening to procure public services.

In general, Member States are required to reduce debt to a level which doesn’t impede sound financial management. Therefore, the Community is creating a full framework for railway finances, which includes rules on aid for restructuring:

4) the granting of certain access rights to infrastructure for the operation of international services by railway undertakings established in the Community or groupings of such enterprises (art. 10). This means that no discrimination shall be made between railway undertakings and international groupings seeking access to infrastructure for the purpose of operating international combined transport goods services.\(^9\)

It is obvious that an integrated railway managing infrastructure and supplying transport services at the same time would determine the condition under which competitors enter the market and this would certainly lead to a conflict of interest and to the violation of artt. 86 and 90.1 of the Treaty of Rome. Therefore, the functions which determine access to infrastructure should be

\(^9\) In order to use the infrastructure, the railway undertakings and international groupings must pay a fee set by the manager of the infrastructure for which he is responsible. The user fee shall be calculated in such a way as to avoid any discrimination between railway undertakings (art. 8).
carried out by an independent body or undertaking that does not itself supply rail transport services, while integrated railways could retain the other activities of infrastructure management.

Following the first steps towards an integrated market for rail transport services by giving access and transit rights to railways undertakings and international groupings thereof by means of art. 10 of Directive 91/440/EEC, two additional Directives, 95/18/EC\textsuperscript{10} on the licensing of railway undertakings and Directive 95/19/EC\textsuperscript{11} on the allocation of the railway infrastructure and the charging of infrastructure fees were adopted in order to ensure the uniform and non-discriminatory application of the rights granted by Directive 91/440/EEC. Both new Directives have been amended in July 1997 by a proposal for a Council Directive\textsuperscript{12} as follows.

\textit{Directive 95/18/EC} concerns the criteria applicable to the issue, renewal or amendment of licences by a Member State intended for railway undertakings which are or will be established in the Community.

The Directive does not apply either to railway undertakings\textsuperscript{13}, which operate passenger services on local stand-alone networks or urban or suburban passenger services using, for example, trams or light rail, or to railway undertakings carrying out their


\textsuperscript{12} The Commission proposed to extend the provisions of Directive 95/18/EC on licensing to all railway undertakings established in the Community, irrespective of whether they are providing the services \textit{ex art. 10} of Directive 91/440/EEC. This way licensing requirements would not prevent all railway undertakings to enter the market on a uniform and non-discriminatory basis.

\textsuperscript{13} According to art. 2 "railway undertaking" means "any public or private undertaking the business of which is to provide rail services for the transport of goods and/or passengers, with a requirement that the undertaking must ensure traction".
own freight operations on a network exclusively for that purpose (art. 1).

Each Member State shall designate the body responsible for issuing licences and for carrying out the obligations imposed by Directive 95/18/EC. The task of issuing licences shall be carried out by a body, which does not provide rail transport services itself and is independent of bodies or undertakings that do so (art. 3).

Licences awarded in accordance with Directive 95/18/EC are obligatory for railway undertakings when providing these services. They are granted by the Member State where a railway undertaking is established but are valid throughout the Community. The main requirements for licence, as set by the Directive, are good repute, financial fitness and professional competence.

Directive 95/19/EC sets broad principles for the allocation of railway infrastructure capacity and the charging of fees for its use, but leaves the Member States the responsibility for setting rules and for administering the system.

In general, the infrastructure management shall assign the network’s capacity to on the basis of principles of non-discrimination and equality in entering the market for all the various transport companies.

Directive 440/91 was quite a success because it inspired the reform of the railways in most member States but it represented only the first step towards the liberalisation of the sector and was actually criticised for not having taken into consideration other important aspects like the public services and the commercial services.

For this reason in 1996 the European Commission presented the White Paper, A strategy for revitalising the Community’s railways\(^\text{14}\), which was defined in press release\(^\text{15}\) "A further policy tool

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in the Commission’s fight to relieve congestion, limit environmental pollution and encourage the better integration of the entire European transport system (...)”.

The White Paper\textsuperscript{16} contains a full analysis of the causes of the crisis of rail transport over the last half century. Among them are\textsuperscript{17}:

a) the competition of the faster, cheaper and more flexible means of transport like buses, trucks and private cars. Citizens and businesses have increasingly turned to road transport and this has increased congestion, pollution, and accidents\textsuperscript{18};

b) the loss of that important market represented by long-distance freight transport. This is a sector where the railways should do well but don’t because they are organised along national lines\textsuperscript{19} and, in fact, an internal market of railway services harmonious at a Community level doesn’t really exist. Besides, there is a whole series of regulatory and administrative obstacles like the railways’ changing, which slows down freight transport a lot, while in international road freight consignments travel in a vehicle which readily crosses frontiers and are normally in one person’s care from collection to delivery, resulting in clear responsibility and good quality of service.

However, in the latest three years there has been a growth in the demand for cargo transport due to the reduction of the infla-

\textsuperscript{16} In drafting the White Paper the Commission has drawn on the ideas of a panel of experts representing rail unions, managers, operators and users. Their report to Neil Kinnock (European Commissioner for transport) “The future of rail transport in Europe” was published on the 19th of June 1996.

\textsuperscript{17} Source: Kinnock’s White Paper.

\textsuperscript{18} The issue of the so called “external costs” of road transport was discussed in detail in the Commission Green Paper “Towards fair and efficient pricing in transport”, COM (95) 691, 20.12.95.

\textsuperscript{19} The reader is reminded that art. 10 of Directive 91/440/EEC granting access to the infrastructure everywhere in the Union only applies to international groupings and companies providing combined transport services.
tion, the public deficit and the boosting of exportations. This fact imposes promter and more adequate organisational responses like the “divisionalisation” of rail companies, which certainly allows a much higher level of flexibility and ability to respond to the needs of the market and clients.

c) bad management, political interference, and inadequate adaptation of the rail network to new patterns of economic activity, to the urbanisation and the consequent changing in the traffic flows. In fact, the future competition will be more between regional and metropolitan areas rather than between States.

In brief, the key elements for revitalising the railways, according to the White Paper, are the following:

1) the market’s opening, with the consequent proposal to liberalise freight rail transport and the market for international passengers service. Introducing new market forces into rail would give management and workers incentives to reduce costs, improve service quality and develop new products and markets. Everyone can see that open access to railway infrastructure would attract new capital and enterprise and competition would also stimulate established operators to improve performance.

In this context, an idea which took off well, as it didn’t involve a changing in the legislation, was that of the FREIGHT FREeways, corridors along which rail freight has open access and thus in many instances a greater priority over other railway traffic. In particular, the freight freeways involve the use of the

20. Governments have usually denied railway enterprises the freedom of a commercial business and have compensated with large subsidies, which met losses without being directed to a particular objective such as the improvement of efficiency and the cutting down of very uneconomic services. On the contrary, railways should be run on a commercial basis and States should pay full compensation only for public services and exceptional social costs.

21. There are many practical ways to introduce market forces into rail. They differ from one part of the railway system to another and are to evolve over time as the railway market integrates at the European level.
Corridor Netherlands-Italy, Hamburg-Brindisi, Rotterdam-Vienna at competitive speed in comparison to road transport (70 Km/h) and with stops at the frontiers limited to the maximum;

2) the management of the railways as real enterprises: railway should be first and foremost a business, with management independence and free to exploit opportunities, but answerable for failure;

3) the reduction of the past railway debt\(^2^2\), with the financial help of the Member States and eventually of the European Monetary Fund;

4) the development of public passengers services, which points out the social role of the railways. The mixed system of obligations imposed by the State and of public service should be substituted by the application of contracts negotiated between the State and the railway operator to all types of public service, including the urban, suburban and regional. In this context, the European Commission's proposal regards clear contracts between the transport operators and the public authorities: the contract would clearly specify both the service to be provided and the compensation to be paid. The financial contribution from the public authority would be explicit and transparent compensation for the burden of providing non-commercial services.

Moreover, market forces should be introduced into the operation of both international and domestic passenger and freight services\(^2^3\);

\(^2^2\) In the case of recent debts, i. e. accumulated since 1993, and of current losses, State aids are subject to the State Aid Rules of the Treaty, as Directive 91/440/EEC clearly states: Member States have to notify aid to the Commission and will obtain authorisation only if they are in accordance with the Treaty, in particular art. 92 (in practice linked to a restructuring programme whose aim is a phased move towards viability).

\(^2^3\) Open access is probably the best solution for long distance passenger transport as it offers most scope to new operators and allows full freedom to provide services in the spirit of the Treaty. On the contrary, an exclusive concession is to be preferred for services operated on the dense and highly used
5) the need for rules for using railways' infrastructure, such as fair competition, improved efficiency, flexibility of timetables, etc. An integration of national railway systems is necessary as the railways developed on national lines over a century and a half, which resulted in difficulties in operating across frontiers, inadequate planning of cross-border infrastructure and fragmentation of the supply industry and of research activities.

At the end of November 1999, the European Commission published a *draft directive on the interoperability of conventional trains*. The proposal contains a framework for European technical standards to be drawn up for areas such as signalling, command and control systems, information systems, rolling stock, staff qualification, and noise. The draft directive on conventional trains follows an earlier directive (96/48/EC) which established a similar framework for interoperability on high speed lines.\(^{24}\)

As for the railway infrastructure charges, the decision of setting the charges shouldn't be taken by the company which runs the railway, but by separate independent bodies.

Last but not least, in the summer 1999 the European Commission published its *Infrastructure Package*. These are wide ranging proposals amending existing Directives on accounting separation, licensing, capacity allocation and charging.

2. Now, let's have a quick glimpse of the railways' reform processes carried out in some Member States of the European Union.

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urban and regional network because it reduces risk and uncertainty for an operator. However the exclusivity should not go beyond what is necessary to ensure the provision of the service, and so should be limited in time and space.

24. The office of the Rail Regulator has been working with the Department of the Environment, Transport and the Regions (DETR) and the industry to identify potential issues, to influence the drafting of the new directive for conventional interoperability and to discuss issues arising from the existing high speed interoperability directive.
The examination will start with the British reform, which is by far the most radical and has inspired the works of the European Commission.

In the United Kingdom\textsuperscript{25} the privatisation of the railways followed that of the telecommunications, gas, electricity and water industries: by the end of the 80's about 8\% of Gross National Product had been privatised.

The privatisation of the railways started in 1992.

On the one hand, the business of running the passenger trains was transferred to new subsidiaries of the former State owned Corporation, British Rail, and then franchised to 25 separate train operating companies.\textsuperscript{26} The business of running the freight trains are run by EWS, which is owned by the American railway operator, Wisconsin Central Transportation Company.

On the other hand, the ownership of the infrastructure was initially transferred to a new Government owned Company, Railtrack, which was finally privatised in 1996.

Railtrack's suppliers are infrastructure maintenance companies, track renewal companies and other services providers. Railtrack provides also access to the railway network to its customers, that is passenger train operating companies and freight operators. Other industries parties are represented by rolling stock companies and heavy maintenance suppliers.

Railtrack's business is supported by state-funded revenues which should be used for the maintenance and renewal of the


\textsuperscript{26} Initially, the franchises were based on geographical territories for each train operating company; now track access rights are granted to operators to work into but not throughout each other's territories.

The Franchising Director awards franchises and pays subsidies. He acts directly on behalf of the Secretary of State through the provisions of contracts he enters into with the private sector.
railway network. In 1999/2000 Railtrack spent £ 1.7 billion on renewing and enhancing the network: the number of broken rails on the network had risen from 756 in 1997/98 to 937 in 1998/99, representing an increase of almost 24%.

The shareholders' profit is guaranteed by the access charges to infrastructure paid by the transport companies, which cover not only the working costs, but also ensure the profit on the invested capital, equal to 8%. It is remarkable that 94 % of Railtrack's annual turnover (4.5 billions pounds) is represented by the access charges to infrastructure.

In the framework of the British reform, a very important role is played by the Rail Regulator, who is a statutory "office holder" appointed by the Government under the provisions of the Railways Act (1993), is the head of a non-ministerial Government Department and has a five year contract with the Secretary of State (Minister for Transport). The Rail Regulator grants and enforces licences and approves access agreements. He has also powers on appeal to modify the agreements entered into by infrastructure managers and to specify the terms of agreements where access has been refused. He is responsible for regulating monopoly, and anti-competitive conduct.

The licence has a constitutional importance as it sets out the rules governing the lawful conduct of the business. The licence is additional and distinct from the franchise awarded to a train operating company. Railtrack's licence requires the company to

27. Cf. the web page of the Office of the Rail Regulator (http://www.rail-reg.gov.uk/anrep2000/regtrack1.htm), in particular the very interesting report "Regulating Railtrack - delivering a better railway".
28. In this sense SAVIANE R., La pianificazione gestionale dello sviluppo delle Ferrovie dello Stato, in Il trasporto ferroviario, cit., p. 499.
30. The franchise is basically a contract to provide services in exchange for subsidy or repayment, for some, in the latter years of the franchise.
seek the consent of the Rail Regulator if it proposes to acquire any interest in train operating or in rolling stock companies.

In November 1999 the Rail Regulator, Tom Winsor, announced his intention to amend Railtrack’s network licence to include three new conditions concerning the creation of a register of Railtrack’s assets and their condition; an effective means of monitoring and reporting on the condition of these assets; and a binding code of practice governing Railtrack’s dealings with its dependent customers.

As we can see, the Conservative Government of John Major went even further than the requirements of Directive 91/440/EC. 31

In France 32 the reform of the railways started in 1997 on the basis of the “Martinand Report” which gave a pretty devastating picture of French railways: in particular, in 1995 the labour costs


exceeded the revenues of the railway commercial activities, the railway traffic diminished grandly and the deficit doubled up from 1994 to 1995.

The reasons of the French railways crisis are the usual: high costs, no flexibility, insufficient quality, unbearable competition of road transport.

The objects of the reform carried out in 1997 were basically two: the elucidation of the respective responsibility of the State and SNFC and the regionalisation of local transport.

As for the first aspect, a public owned company, Reseau Ferre' De France (RFF), was created. It is under complete State responsibility and owns the railway infrastructure including premises and lands connected to railway infrastructure as a return for the 125 billions French Francs of debts acquired. Therefore, it is responsible for the development and maintenance of the infrastructure and cashes the charges paid by the transport companies to use the railway network.

The infrastructure management belongs to SNCF which receives for this service revenues from the company owner of the infrastructure: while RFF pays 20 billions French Francs to SNCF, SNCF cashes 6,2 billions French Francs for the tolls.

As for the second aspect, the French Government has launched a project of regionalisation of local transport in six French regions (Alsatia, Centre, Nord-Pas-de-Calais, Pays-de-la-Loire, Rhone-Alpes, Provence-Alpes-Cote-d’Azur). In these six areas, the State has transferred to the Regions the funds, which used to be paid to SNCF for the regional services provided. Regions contracts with SNCF the utilisation of State funds in order to defy a model of the offer which is coherent with the needs of local communities.

33. These properties cannot be sold out to reimburse the debt undertaken by RFF. This way the State is fully responsibility in the infrastructure’s field.
34. For more on the French restructuring of railways cf. BATISSE F., Restructuring of Railways in France: “Salvage Operation”, in Japan Railway & Trans-
In analysing the German railway’s reform we have to bear in mind that the unification of BRD and DDR demanded a new configuration of the railways under various point of views (organisations, relations to the State, etc.).

The reform of the railways in Germany started in 1993. The Germans had to change the Constitution, which stated that the railways are a public body. This way, Deutsche Bundesbahn (DB), which had incorporated Deutsche Reichsbahn (DR), could be transformed into a joint-stock company (initially owned by the State) and be privatised.

The railway infrastructure is clearly separated from the business of running the trains.

Up to the year 2002 there is a State owned holding (DB AG) which carries out the co-ordination between the infrastructure management and the transport companies. The holding is subdivided into five operational divisions (Cargo AG, Reise & Touristik AG, Regio AG, Station & Service AG, Netz AG) which are to become joint-stock companies and be privatised.36

The necessity of a railway’s reform in Holland\textsuperscript{37} was pointed out in 1992 by the “Wijffels Commission” which underlined the importance of a clear separation between the responsibility of the State and the commercial business of railway enterprises, in order to fight against the fall of the railway traffic, especially for passengers.

A key element of the Dutch reform was the decision of making the access to the network free\textsuperscript{38} up to the year 2000, in order to reach the financial independence necessary to give up public aids and enter a new competitive market. However this is a transitory policy which will be certainly put under revision with the developments of the “freight freeways”.

As for the detailed steps of the reform: the NS group was subdivided in enterprises separated for mission and business and the infrastructure was separated from the commercial activities.

On the one hand, the infrastructure is now subdivided into Railned (in charge of the allocation of the infrastructural capacity among the transport companies), NR Rail Infrastructure (in charge of the co-ordination of the infrastructure changing directed to the strengthening of the network) and NS Traffic Control (which ensure the circulation services on the network).

On the other hand, the commercial business is divided into four enterprises, which operate within a licensing system: NS Reizinger (passengers), NS Cargo (freights), Station, Patrimony.

Railned is in charge of the division of the infrastructure capacity and aims at ensuring access to the market for all railway transport company on an equal footing.

The results of the reform can be already seen: the accounts of the NS Group are totally exempted from infrastructure’s costs,

\textsuperscript{37} Source: SPIRITO P., \textit{op. loc. cit.}, pp. 75-82.

\textsuperscript{38} This regards only the circulation service and not the costs of the energy, which is given by the transport companies on the basis of a parametrical distribution criterion.
which are under total responsibility of the State, while for the passenger transport there is still a dual system of public funds.

The railway reform in Sweden might serve as an example of liberalisation carried out through means different from privatisation. In fact, the Swedish State Railways (SJ) is State-owned but operates on fully commercial conditions as if it was a private company.

The reform of the railways in Sweden started in the late eighties following the parliamentary Transport Act of 1988, which focused on turning the railway into a profitable, efficient and customer orientated transport system.

To this end, a new state-run railway administration, Banverket, was founded in 1988 and is in charge of investment management and maintenance for the railway network.

The Swedish State Railways (SJ) was transformed into a railway undertaking with economic objectives. Actually, it operates passenger and freight services on the trunk lines on a commercial basis without State subsidies.

Sweden's regions operate on the secondary network with the option of entrusting the operation of services to undertakings other than SJ.

The decision to split SJ into two parts was only the beginning of the Swedish reform: it was soon followed by the installation of a new management board, most of whom recruited from the pri-


40. The Swedish State consists on 24 "län" altogether.
vate sector; the cutting of labour costs, the divisionalisation into business units; the introduction of an up-to-date accounting system and programme to measure rolling stock availability.

Since 1 July 1996, network access has been open to all freight operators although existing traffic is given preference in the allocation of train paths.\(^4^1\)

3. Also Italy is witnessing nowadays one of the most significant changing in its economic history: privatisation.\(^4^2\) The reasons for privatisation are basically to make enterprises work according to economic and efficient criteria, to reduce public debt and to promote competition, essential in the European market.

The railways are the last sector which has been privatised in Italy: air transport was totally liberalised in 1992 by a complex of regulations of the European Council which constitute the so called “third package”; domestic road cabotage was privatised in 1997 and so was maritime cabotage.

The reasons why the privatisation of the railways took longer to take off are clear: it is very easy to privatise a public body which operates successfully on the market in conformity with strictly economic criteria, in a word, market orientated. On the contrary, there are a lot of problems in privatising a public body characterised by dysfunction and bad management.

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41. ÖSTLUND B., The Swedish example, in Rail International, n. 1-2, January-February, 1998, pp. 122-123. The Author points out that the allocation of train paths represents the main source of conflict between operators. As a result, a supply procedure system governing the allocation of paths in competition is needed, as well as a better delimitation of the separation line between SJ as a transport operator and Banverket as an infrastructure manager in terms of the competitive situation of the railways.

There are many ways to carry out privatisation. The Italian legislator chose this one: the transformation of the former public body “Ente Ferrovie dello Stato” into a joint-stock company.\footnote{See on this MALFATTI V. - RANZI D., Obiettivi e natura della trasformazione dell’Ente pubblico economico nelle Ferrovie dello Stato S.p.a., in Trasporti, n. 75, 1998, p. 68 \textit{et seq}.} This was achieved by law, in particular by the decree-law 333 of 1992, which provided for the transformation of various Italian public economic bodies (IRI, INA, ENI, ENEL) into joint-stock companies.

So, the privatisation was carried out by law and at the beginning this arose a lot of legal problems because it is quite inappropriate to talk about “transformation” of a public body into a joint stock-company as the “transformation” is typical of company law, and according to art. 2498 of the Italian Civil Code it operates only on the basis of a specific deliberation of the shareholders (and not by law) and under particular formalities (public act, etc.).

But even though the transformation was carried out unilaterally by law, nobody can deny\footnote{See BAVETTA G., La trasformazione delle F.S. da ente pubblico a S.p.A.: profili giuridici e problematiche normative, in Il trasporto ferroviario nell’Europa del 2000 (Atti del Convegno “Villaggio Marisipica”, Ispica – Ragusa, 30 agosto – 4 settembre 1999), Messina, 1999, pp. 233 \textit{et seq}.} that what has been constituted is a proper joint-stock company, firstly because the new joint-stock company (Ferrovie dello Stato S.p.A. has taken the place of the former Ente Ferrovie dello Stato in all the relations with the Italian State: for this reason, the joint-stock company has become grantee of the railways public service. Secondary, all the properties that once belonged to the public body have been transferred to the joint-stock company. This has arisen a lot of legal problems because most of these premises belongs to the State-domain and are inappropriable. However, the tendency is to think that the joint-stock company owns not only the tracks and the relative
infrastructure but also all the other properties which were destined to the institutional use of FS.\textsuperscript{45}

An other legal problem was caused by the means of privatisation chosen by the Italian legislator.

In our legal system a company is established through a contract. According to art. 2247 of the Civil Code "through the contract of company two or more people provide goods and/or services to carry out a common economic activity with the purpose of sharing profits". For a long time this has been interpreted as there is no company if there is no lucrative purpose. It is mainly thanks to the famous Italian jurist Angelo Falzea, that the problem was solved: the Author distinguished the aim of the company from the aim of each single shareholder: the aim of sharing the profits belongs to the shareholders and not to the company.

In other words\textsuperscript{46} there has been through the years a "fading" of the lucrative aim and the company has become a model used to pursue a lot of different aims.

Has the Italian privatisation been successful yet? The answer is not yet. It is not enough to call a public body "private", it is not enough to change the name. To go from public to private one has to change the rules of the exercise of the productive activity and, above all, adapt to the institutional aims of a private enterprise. All of this never happened in Italy because the Ministry of Treasury is the main shareholder of the new joint-stock company, which is still at loss (minus 2.520 billion It. Liras 1994; minus 3.841 billion It. Liras in 1996), and the railways are still managed in agreement with the Ministry of Treasury. Therefore the State interference is still enormous.

It is also to remember that the Government has placed a limit on what FS can do by asking to balance its sheets in 2003, not only for services and commercial activities but also for infrastructure.

\textsuperscript{45} \textit{Ibidem.}
\textsuperscript{46} BAVETTA G., cit., pp. 247-248.
management. This will create, though, the risk that FS will only raise the tariffs, thus causing discontent among the customers, or cut the labour costs, hence penalising growth heavily.

Even if many problems remain open, a positive step in line with liberalisation has been the birth of Trenitalia, the FS Group’s company for transport activities, which will be followed by the creation of a company for the railway’s infrastructure, another fundamental step in reorganisation\(^\text{47}\).

The “divisionalisation” of the rail company is already been launched: at the moment, there are three Transport Divisions (Passengers, Regional Transport, Cargo) and a Technology Unit.

What is also very interesting is the creation of a joint-venture\(^\text{48}\) between FS’s Division Cargo and the Swiss Federal Railways’ freight division in order to create and integrate logistic services along the north-south European axes and acquire a leading competitive position in the European market for transport and logistic services.

In statutory terms, the joint venture involves the setting up of a new joint-stock company, CargoSI, with a chair-man named by the Swiss and a managing-director named by the Italians. The managing-director manages the company on the basis of the budget and policies approved by the board, which consists of an equal number of members from FS and FFS.

The two railway companies holds equal shares. The Italian stake is allocated to Trenitalia.

The integration is expected to cover two phases: a first phase going from early 2000 to autumn of 2000, in which joint commercial initiatives began for some forms of international traffic, and a second phase, which will lead to the complete integration of the

\(^{47}\) On 21 March 2000 the Minister of Transportation enacted a decree-law on the fees for infrastructure (G.U. n. 94 of 21 April 2000).

\(^{48}\) Source: ZEFELIPPO M.T., Joint venture closer, in Fermerci, a bimonthly on Transports and Logistic, September - October 1999, pp. VIII-IX.
two freight divisions in 2002 on the basis of operational experience.

When CargoSI goes operational, we will be witnessing a fundamental point of arrival for the reconstruction of Italian railways.

As we can see, the joint venture with the Swiss Railways will bring significant improvements at a technical-infrastructural level as it will lead to a major streamlining of frontier operations, the opening of new “corridors” towards all the main European traffic areas, and a significant step forward on the path of freight interchangeability, as the locomotives used by FFS are easily adaptable to the German network.49

In conclusion, also in Italy it is very important to improve the railways due to the congestion of the other means of transport; for example in the passenger transport there is a growing demand for fast transport and in 10 years’ time air traffic will increase by 30-40%.

A future possible development of railway transport is definitely in the metropolitan areas. Bologna is already served by an efficient network of railway and counts 8 train stations.

4. It is generally acknowledged that in recent decades European rail transport hasn’t been able to meet the demand of a highly competitive global market and has therefore suffered a continually declining share of the market.

More or less the same causes are found in various countries. The remedies may change, but what is needed, first of all, is an extensive reform in the legislation in the framework of a transport policy aiming to provide a reliable, environmentally sound and safe service that is economically efficient and sustainable in the long term.

49. BUSSOLO M., Looking beyond the political debate, in Fermerci, a bimonthly on Transports and Logistic, July - August 1999, p. 17.
There are some problems, which are absolutely preliminary to the enactment of any modern legislation on the railways. In other words, any debate on the reform of the railways should be necessarily advanced by two mayor questions:

1) shall the State legislate on the subject? Is the State's interference socially and economically convenient?

2) Admitting the necessity of the State's interference, under what form shall it be carried out? Shall the State manage the infrastructure or shall this be competence of private enterprise? Are State's aids admitted? Is privatisation the central principle behind a successful transport policy?

We agree with the innovative theory recently put forward by Elena Orsetta Querci 50, who firmly believes that only the "administrative science" ("Scienza dell'Amministrazione") can give the adequate answer to these questions. The Author points out how successful the "administrative science" is in Italy, while it is practically unknown abroad, with exception Spain and South America.

The "administrative science" was officially introduced in the law academics in 1882: an university regulation provided expressively for the separation of the "administrative science" from the "administrative law". As Carlo Francesco Ferraris pointed out, the "administrative science", differs from the "administrative law" because the latter analyses the administrative organisation of the State and the administrative jurisdiction, while the former combines the political, sociological and technical aspect with the legal one.

50. Cf. QUERCI E.O., Diritto dei trasporti e scienza dell'amministrazione, in Trasporti, Diritto, Economia, Politica, n. 75, 1998, pp. 5 - 22. The Author blames the politics for the Italian railway crisis referring to a newspaper article in which Ernesto Galli Della Loggia defined the situation "Far West", in consideration of the lack of political measures, of technical progress, and management, which can likewise be seen in the fall of the strategic importance of the international maritime links.
The “administrative science” studies the economic, political, sociological, and technical aspect of the public administration of transports. It is not a legal science, but a political science. The legal sciences study the positive law, building their systematic constructions on the positive law itself. On the contrary, the political sciences, including the “administrative science”, are particularly critical toward the positive law, underlining what should be done in order to create a sociology of bureaucracy constantly involved in the reduction of transport costs and the improvement of the services rendered. Therefore, the “administrative science” is a speculatively teleological science: it studies the railways under the political, economic, sociological, technical and juridical point of view with the purpose of integrating the railway transport into a new market, facing now globalisation and internationalisation.

The “administrative science” promotes the principle of the scientific organisation of transport and labour.

The transport is an issue that belongs to the entire community world-wide and shall be carried out within a modern infrastructure system promoting free trade, and free movement of people, goods and capitals.

As for the labour, this must be organised in a rational and efficient way within a productive system characterised by the fact that the manager, the capital, the workforce and the machinery are all part of a process directed to the efficiency, promptness, convenience and quality of the services. For example, a modern system of public or private transport should be more maintenance-orientated as the lack of it has often been the cause of mayor railway accidents\textsuperscript{51}.

\textsuperscript{51} The railway accidents are not only individual traumatic experiences but they also cause a collective trauma over railway safety and railway management. Although shipwrecks, air-disasters, and road accidents are all far commoner occurrences than serious railway accidents, it is the violence, the destruc-
These premises have been necessary to analyse the measures taken by all the Governments world-wide to revive the railways. Everyone can see that the only remedy against the “railway-disease” is an extensive reform of the institutional framework in favour of liberalisation, which introduces elements of competition whose effects are the acceleration of the processes of adaptation of the productive models towards economy, productivity, adherence to the market and reducing barriers to free trade.

There is no model for the liberalisation of the rail system and this creates a sense of “anguish” that may invade European rail companies turning from government aid and monopoly into market competition, as it has been pointed out in “Competition Angst?”, a recent conference on rail liberalisation held in Berlin. However, almost complete unanimity was found in the debate around the idea that liberalisation is not so much a danger as an opportunity for re-launching rail, even if it will be some time before the liberalisation process is accomplished.

tion, terror and slaughter of the railway accident which dominates the headlines, commands public attention and give a bad reputation to railway companies.

Here is a list of the main railway accidents occurred to passenger and freight trains in Europe. In many cases the related public enquiries on the causes of the accidents are still open.

- Aisgill, U.K. (January 1995): one man died and almost 30 people were injured in an accident at Aisgill. A derailed passenger train was hit by another, killing the guard of the stationary train. The official report into that accident said it could have been less serious if a crew member of the derailed train had immediately set out to protect the train.

- Piacenza, Italy (12 January 1997): a high-speed train derailed to the doors of the station of Piacenza, crashing against a iron pillar. Eight were the victims of this tremendous incident. The causes of the disaster are today not clear. Excessive speed is a credited hypothesis.

- Gillingham, Kent, U.K. (4 February 1997): a train consisting on two diesel locomotives and 19 wagons containing ballast derailed and crashed through the parapet of a bridge. Four people were injured.

- Southall, London, U.K. (19 September 1997): a packed Intercity train slammed into a freight train at high speed. The accident claimed 7 people while 160 were injured. The investigators have been particularly concentrated on the
The same observation came out of the International Seminar “Problems of the Railway Law in Reform Time”, organised by the Russian Academy of Railway Transport (Moscow, 05-09 July 2000), which pointed out above all the irreversibility of the liberalisation processes, including railway privatisation. Rail liberal-

examination of the signalling system and the track, especially the signalling and pointwork in the proximity of the accident’s site.

- Barry, South of Wales, U.K. (27 December 1997): A freight train carrying 60 tonnes of liquid vinyl chloride monomer derailed. Up to a thousand people had to be evacuated from their homes “as a precautionary measure” as there would have been a risk of cancer to anyone exposed to the chemicals in case of spillage.

- Eschede, Germany (3 June 1998): this is by far the worst rail accident in 50 years for German Railways. A high-speed Inter City Express train derailed at 200 km/h, bringing a bridge down onto itself. 101 people died and 88 were injured. One of the wheels became immediately the focus of the investigation. The debate suggested that the destruction of the wheel that caused the train to derail was due to metal fatigue. Another theory was that the wheel struck an object: in this case it remains to be determined if the construction of the wheel had a role in causing its complete destruction. However, features of both the infrastructure and the rolling stock contributed to the scale of the disaster: the speed, the track (the line upon which the train was travelling was not a dedicated high-speed line), the bridge, the construction’s materials of the cars.

All Inter City Express trains were immediately withdrawn and their wheels subjected to inspections.

- Dennis, Germany (10 June 1998): a passenger train hit a railway maintenance truck causing minor injuries to 15 passengers and seriously injuring two maintenance workers who were working on the line.

- Ladbroke Grove junction, London, U.K. (5 October 1999): a local train virtually disintegrated in the crash impact with a high speed train causing the death of 31 people, with a further 227 taken to hospital and 296 treated for minor injuries on site. It appears that the initial cause of the accident was that one train passed a red signal. The causes of the accidents are still unknown but the investigation is considering both the human factor and the technical factor (signalling equipment’s failure, track’s misalignment, incorrect functioning of the braking systems, etc.).

- Hamar, Norway (24 September 2000): passengers had a narrow escape when the trains on which they were travelling were sent on a collision course. Both trains had by accident received a green signal.

- Basque region of northern Spain (7 September 2000): four people were killed when two freight trains collided and the locomotive of one of the trains plunged into a river.

52. On the subject of privatisation of European railways see: OCDE, Privatisation of Railways, Paris, 1993; CORNET J., Struktureform und Privatisierung
isation is now a train that no one can stop, in Europe and also in the Russian Federation, where among other problems, the legal framework is missing.

What should be underlined is that liberalisation does not necessarily involve privatisation: the Swedish railway reform is a proof that a State-owned rundown railway does not need to be privatised in order to be transformed into a commercially successful modern railway company. The results of restructuring in Sweden speak for themselves: infrastructure management has been fully separated from train operating and the deficit of US$ 1.52 billion in 1988 has turned into a profit of US$ 1.75 billion in 1995.

The market for regulatory experience has assumed worldwide proportions so that an exchange of information and experience is essential not only with countries where railway privatisation is on the political agenda, but also with countries where regulation is being applied to state-run railways in order to enhance consumers benefits. In 1999, for example, the U.K. has received delegations from among others Italy, France, Australia, Canada, Spain, Portugal, Bolivia, Mexico, Pakistan, Singapore and international seminars\(^5\) have been held practically everywhere in Europe. A scientific, technical and academic co-operation on

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\(5\) Here is only a short list of the major international seminars, which have been held on the restructuring of the railways:

- UIC, The consequences of restructuring on human resources, Paris, 6-8 December 1995;
- CUST, Il trasporto ferroviario nell’Europa del 2000, Ispica (Ragusa), 30 agosto - 4 settembre 1997;
these topics will certainly reduce the anguish aroused by an uncertain and indefinite future.

To sum up, the process of transformation of the railways is not completed with privatisation, which is only one means, but through the market’s liberalisation, which is on the other side a new way of getting over useless monopolistic conditions. It is not through selling more or less shares of the railway company that we will solve the problem, but through the recognition that real liberalisation means having a number of operators competing in the same market and therefore improving the quantity and quality of the resources.

In other words, a market orientation is necessary as it promotes competition based on flexible supply, service quality, “receptivity” to what demand is telling us to do, technological innovation, the organisation of production, adequate industrial relations and prices.

In this context, the role of the logistic should be particularly highlighted, considering, above all, the new market trends such as the “just in time” system.

The European Community policy aims at transforming the railways into businesses run on commercial lines and creating a clear relationship between the State on the one hand and the railways on the other. 54 Though the international dimension has largely been missing: all the European railway reforms have been primarily based on domestic issues like the organisation of railway undertakings and their relations with the State. Railways should be more conceived as international services regulated by

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bilateral and multilateral agreements among the major European railway undertakings. Free trade and free circulation of freights and passengers should be promoted effectively in order to compete in a global international market and tariffs should only be focused on the market costs.

In conclusion, there is a general consensus in Europe that the railway is an important transport mode and definitely part of the future. Unfortunately, we have to pay the consequences of 50 years of previous neglect, which is the main cause of the poor performance of the railways. In addition, there should be a more critical approach to the studying of the economic, political, sociological, and technical aspect of the public administration of transports. This can be achieved by the "administrative science", which, being a political science, can play a leading role in the outlining of the preconditions required for the integration of the railway transport into the new global transport market.