

European Union Railway Liberalisation

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BACKGROUND

“Rail is a contrast: a mixture of ancient and modern. On the one hand, there are high-performance high-speed rail networks serving their passengers from modern station; on the other, antediluvian freight services and decrepit suburban lines at saturation point, with commuters hammed into crowded trains which are always late and eventually release their floods of passengers into sometimes dilapidated and unsafe stations”.

The first paragraph of the “White Paper *European Transport Policy for 2010: Time to decide*”¹ resumes exactly the situation of the European railway, characterized by big investments and high technology² and manifold cases of congestion and delay at the border³.

In order to create an integrated railway system and to improve the European standard level, the Commission starts in 1990 an European

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1 COM(2001) 370, 12.09.2001.

2 The TGV is able to arrive from Paris to London in only two hours.

3 For example the train from Trieste to Lubijana takes three hours comparing with only 45 minutes by roadway.

railway programme concerning Communication, Working Document, Legislation measures and Directives. This survey highlights the main initiatives implemented by the European Commission.

INITIAL PROVISIONS

The first piece of major legislation dates back to 1991, when the Council of Ministers adopted the **Directive 91/440/EEC**. This introduced a degree of liberalisation into certain areas of rail transport, primarily for rising the competitiveness.

The directive requires Member States:

to organise the railway undertakings with the purpose of they understand the need for competitiveness and sound financial management, introducing a strategy with the existing public railway operators for decreasing the **indebtedness** of railway undertakings;

to provide railway undertakings of **independence**, related to budget and system of account from those of the State;

to ensure **rights of access** for rail transport operators to other Member States to **international combined transport services**, opening up a Community markets in these sectors. It also created the opportunity to give access for **international freight and passenger services** under certain conditions;

to **separate** the accounting of railway infrastructure (track and related equipment) from that of operation of transport services. The aim is greater transparency in the use of public funds and better evaluation of the actual operation of these two sectors.

In 1995, the Council of Ministers adopted the **Directive 95/18/EC**, to establish common criteria for the **licensing** of the European railway undertakings. To get an operating licence, they have to satisfy a number of specific conditions, such as financial standing, professional competence and civil liability. The following rules were also set up on the **allocation** of railway infrastructure capacity (**Directive 95/19/EC**). This requires Member States to organise an **Infrastructure Manager** to allocate railway infrastructure capacity in an impartial and non-discriminatory way. The directive also laid down a number of guiding principles for the **charging of fees** for infrastructure use. Thus, “the body responsible for managing railway infrastructure must maintain a balance between income from fees and State contributions on the one hand, and infrastructure spending on the other. Member States must also ensure that the prices charged are market prices, and must not charge fees which are unfair or discriminatory”.

In 1996, the European Commission published a *White Paper* with a *Strategy for Revitalising the Community's Railways*, This promoted a signifi-

cant role for the market forces, which would encourage operators to cut their costs, improve the quality of service and offer new products.

The *White Paper* also advocated a clear separation of responsibilities between the State and railways, which had to have a financial structure allowing them to be soundly and independently managed.

The White Paper was the starting point for all initiative which the Commission has taken since 1996, particularly the proposals for the three infrastructure directives put forward in July 1998.

FIRST RAILWAY PACKAGE

For enhancing the efficacy of the legislation, in 1998 the Commission suggested three new proposals. After long discussion, the European Parliament and the Council of Ministers adopted three directives which were published in the Official Journal L75 on 15 March 2001. The Directives are now known under the name “Rail Infrastructure Package” and the Member States must implemented the provision of the Directives in national legislation by 15 March 2003 at least.

Directive 2001/12 revised Directive 91/440 (consolidated version) on the development of the Community’s railways. On the one hand, the directive establish **different organisations** for transport operations and infrastructure management. Fundamental activities, such as rail capacity allocation, infrastructure charging and licensing are separated from transport operations to enable new rail operators fair access to the rail market. On the other hand, it seek to the Member States “to adapt their national legislation to enable the extension of access rights for international freight services to the national section of the Trans European Rail Freight Network (**TERFN**)”, which has a length of nearly 50.000 km.”⁴. As of 15 March 2008, the entire European Rail Network will be open to international freight services.

Directive 2001/13 amends directive 95/18 (consolidated version) on licensing of railway undertaking by defining the conditions under which companies can obtain a licence to run rail freight services over the TERFN. The Directive sets the framework for the financial, economic and safety conditions to which railway undertakings must comply to obtain a licence. The licensing authority will issue licences that will be notified to the Commission and that will be valid throughout the territory of the Community.

As far as is concerned the allocation and charging of railway capacity, **Directive 2001/14** sets the framework conditions for capacity allocation and management, as well as the tariff structure for the use of the network.

⁴ Some of 70-80% of the rail freight traffic is carried out over the TERNE.

THE 2001 WHITE PAPER

In September 2001, the “White Paper on European Transport policy for 2010: time to decide”, has been published by the Commission. The aim was to introduce the wide range plan of reforms including over 60 measures to create a new balance between modes of transport by 2010, particularly by increasing the use of railway and promoting maritime and inland waterway transport.

Specifically, the aim for rail transport is reversing the current decline over the last decade. The modal share should be reach in 2010 the same level of 1998. As the forecast for total transport demand is expected to be the 40% higher in 2010, rail transport, as a consequence, should increase more than proportionally. Furthermore, an European Railway Safety and Interoperability Agency has been thought to promote and improve “access to the railway network for freight transport” and to aim existing directives on the interoperability of conventional rail systems and High-Speed Rail system.

SECOND RAILWAY PACKAGE

On 23 January 2002, the Commission has adopted the “second package” to boost the railways entitled “Towards an integrated European railways area⁵”. The measures are designed to stop the railways losing market share⁶. The programme follows the guidelines established in the recent White Paper on transport and aim at greater **safety, interoperability** and **opening** of the rail freight market. To give strong impetus to this process, the Commission has also proposed establishment of a **European Railway Agency** to steer the technical work on safety and interoperability.

The second railway package are divided into five proposals for legislation to achieve full integration of the railway area. They consist:

Developing a common approach to rail safety⁷: a proposal for a directive aims at guaranteeing rail safety by publishing rules which everyone can understand. It lays down a clear procedure for granting the safety certificates which every railway company must obtain before it can run trains on the European network.

5 COM(2001) 370, 12.09.2001.

6 Only 8% of goods are carried by rail, compared with 21% in 1970 and with 40% in the USA. The average speed of international rail freight services has fallen below 18 km/h, slower than an icebreaker clearing the way for shipping in the Baltic Sea.

7 Directive on rail safety: COM(2002) 22, 23.01.2002.

Bolstering the fundamental principles of interoperability⁸: in order to operate transfrontier services and cut rolling stocks on the high-speed network, the Commission proposes to follow the solutions providing by a team of experts on the technical interoperability, that must be extended to the entire open network.

Setting up an effective steering body: the European Railway Agency⁹: the aim of this agency is to coordinate a group of technical expert seeking common solution on safety and interoperability, to submit proposals on these subjects and to play a liaison role between the different competent national authorities.

Extending and speeding up opening of the rail freight market¹⁰: the first railway package opened up the market for just international freight services, the proposal here is to opening up the national freight market, as well, by 2006.

Joining the Intergovernmental Organisation for International Carriage by Rail (OTIF): as regards of the carriage of dangerous goods by rail or technical standards applicable to railway material, it is essential for the Community to accede to the OTIF Convention and exercise its power on rail transport within OTIF.

The Commission also stimulated the debate regarding a series of further steps to ensure the high-quality rail services, to remove barriers to entry to the rail freight market (ERTMS), to improve the environmental performance of rail freight services, as well as the rail passenger's right.

THIRD PACKAGE

“With the *third railway package* presented on 3 March 2004, the Commission proposed to continue the reform of the railway sector by opening up international passenger services to competition within the European Union”. In this way, the process of the European railway integration is ensured also with improving of the rights for passengers using international services, establishing a certification system for locomotive drivers and stepping up the quality of freight services.

According to the guidelines set out in the White Paper, the Commission presented the following proposals:

8 Amendment of the interoperability Directives 96/48/EC and 2001/16/EC: COM(2002) 21, 23.01.2002

9 Regulation establish a European Railway Agency: COM(2002) 23, 23.01.2002.

10 Amend Directive 91/440/EEC: amendment 50 – European Parliament legislative resolution on the Council common position for adopting a European Parliament an Council directive on safety on the Community's railways. A5-0325/2003 of 23.10.2003.

Opening up of the market: from 1 January 2010, the railway undertakings, which holding a licence and safety certificates, should be capable to operate international services in the Community. It means that the operators could pick up and set down passengers at any station on an international route. The organization of the service should to safeguard the economic equilibrium of public service contracts, which can be affected by this, while at the same time, it should not placing exaggerated constraints on the operating conditions of new international operators.

More rights for passengers: it consists of a regulation establishing “minimum standards for information for passengers before and during their journey, the rules to be followed in case of delays, treatment of complaints and assistance for individuals with reduced mobility. This regulation constitutes the basis for the introduction of more favourable measures which will be encouraged through voluntary agreements between the industry and passenger organisations”.

Certification of locomotive drivers: this text establishes a mechanism allowing a more precise definition of the skills and responsibilities in terms of training, assessment and recognition of qualifications of locomotive drivers and train crew responsible for safety aspects. A single certification model shall be establish to guarantee the necessary uniformity and transparency for the development of the Community’s railways.

Quality rail freight services: currently it miss quality assurance for freight services, leading a negative impact on the attractiveness of rail transport and explaining the reasons why its market share is still declining. Establishing a minimum quality clauses in contracts between railway undertakings and their customers, guarantees that quality factors are systematically discussed and taking into account in contracts.

THE DISCUSSION IS TO BE CONTINUED

The European Parliament has debated and has made amendments on the four proposals concerning the *third railway package*.

As regards the development of the Community’s railways, the European Parliament legislative resolution has approved the Commission’s proposal, introducing amendments that follow the recommendation by the Committee on Transport and Tourism, based on the legislative report by Georg Jarzembowski. To **open up the market**¹¹ in passenger services, the institutional framework must be transposed into national law in 2006 at the latest, and the international passenger networks should be opened up by 2008 and all other forms of passenger service by 2012.

¹¹ Provisional edition A6-0143/2005.

As far as is concerned the international rail **passenger's right and obligations**¹², the European Parliament does not distinguish between international and national passengers, but introduces the concept of rail passenger. Following the report by Dirk Sterckx (ELDR, BE), the minimum compensations for delay shall be:

- 25% in event of a delay of 60 minutes or more;
- 50% in event of a delay of 120 minutes or more;
- 75% in event of a delay of 180 minutes or more.

These compensations should be paid no later than one month after the application has been made. Also for passengers who hold a season ticket and encounter repeated delays or cancellations, a compensation in form of free journeys, price reductions or an extension of the period of validity of a season ticket shall be established.

The certification of train crews¹³ operating locomotives and trains on the Community's rail network has been approved by the European Parliament, introducing two parts: the basic licence, attesting to compliance with certain requirements and basic fitness and competence to drive trains, and a harmonised complementary certificate attesting to technical knowledge and knowledge specific to the service. The Member States should be responsible for issuing the basic licence, and railway undertakings should be responsible for issuing the harmonised complementary certificate. These documents are mutually recognised by the Member States.

Lastly, the proposal on compensations in cases of non-compliance with **contractual quality requirements for rail freight services**¹⁴ has been rejected by the European Parliament. This system could increase costs for rail freight services and distort competition with road transport. As the legislative report by Roberts Zile (UEN, LV) argues, "the compensation system would not improve standards in the industry, and existing international legislation is already imposing strict enough rules on rail, far more than equivalent regulations on road transport. Rather than imposing more regulations and fines, the emphasis should be on easier market access for new rail companies so as to increase competitiveness".

12 Provisional edition A6-0123/2005.

13 Provisional edition A6-0133/2005.

14 Provisional edition A6-0171/2005.

BIBLIOGRAPHY

www.europa.eu.int/comm/transport
Rail Transport and Interoperability
Directive 91/440;
Operating Licences and Allocation of
Path;
The Infrastructure Package;
A new Package for the Railway Sector;
New Proposals in 2004;
Further integration of the European rail
system: third railway package, Com-
munication COM, 2004;
Proposal for a Directive of the European
Parliament and of the Council, amend-
ing Council Directive 91/440/EEC on
the development of the Community's
railways, COM, 2004;
Towards the Rail Transport European
Integration, COM, 2004

www.europarl.eu.int

Texts adopted by Parliament:

Development of the Community's rail-
ways;

Rail freight quality requirement;

Certification of train crews;

International rail passengers' right and
obligations;

White Paper. Strategy for Revitalising
the Community's Railways, 1996.

White Paper. European Transport Policy
for 2010: Time to decide, 2001.