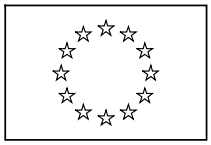

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Towards an integrated European railway area

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Contents

INTRODUCTION: THE WHITE PAPER AND THE NEED FOR A NEW RAILWAY PACKAGE

The Stockholm and Göteborg European Councils established further reform of Europe's railways, with the presentation of a second package of measures by the end of 2001, as a priority objective.

This was taken a step further in the **White Paper "European transport policy for 2010: time to decide"** adopted by the Commission on 12 September 2001[1], in which revitalising the railways is one of the key components in the strategy proposed by the Commission to shift the balance between modes.

However, the situation reported in the White Paper is patchy, to say the least. Rail's market share is continuing to decline, while quality standards for goods services remain far from sufficient and, in some cases, are deteriorating. Beyond doubt the greatest cause for concern is the state of rail freight services since their share of traffic, taking all modes together, stands at 8% today compared with 21% in 1970 and, looking at inland transport alone, at 14% from 35%. Despite a number of promising developments, new initiatives on the market and restructuring of the historic railway undertakings in various Member States, the pace of change has not been fast enough.

For this reason, the White Paper proposes an ambitious action programme revolving around three types of measures to revitalise the railways:

– First, a fair system for charging for all modes of transport must be put in place to reflect the full value of the cleanest modes.

– Next, development of the trans-European transport network must continue, giving strong priority to rail and concentrating on removing bottlenecks and adding new major railway projects to the list of priority projects adopted in Essen, taking account of the need to improve access to the outlying regions and to regions suffering from geographical handicaps.

– Finally, a legally and technically integrated European railway area must be constructed.

The measures proposed in this communication come under the third of these lines of action in the White Paper.

One key phase in progress: implementation of the infrastructure package

The measures proposed in this communication presuppose establishment without delay of the framework mapped out by the "infrastructure package" - Directives 2001/12/EC,

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[1] COM(2001) 370. See, in particular, the action programme (p. 105) and Chapter I.B "Revitalising the railways".

2001/13/EC and 2001/14/EC[2] - which entered into force on 15 March 2001 and must be implemented by 15 March 2003 at the latest.

These directives clarify the roles and responsibilities of all the players, i.e. of the railway undertakings providing the transport services, of the infrastructure managers responsible for developing the infrastructure and providing access to it on clear, appropriate terms and, finally, of the supervisory bodies with the task of arbitrating potential conflicts between railway undertakings and infrastructure managers. Relations between these three players must be set in a framework ensuring a transparent flow of information to the operators, legal certainty in contractual relations between them and neutrality in essential functions such as licensing railway undertakings, allocating infrastructure capacity and charging for use of infrastructure. These are the minimum preconditions if existing operators are to mount pan-European services and new prospective operators are to start running railway services.

Beyond that, the financial relations between these different activities must be clearly identified by effective separation of the accounts to enable railway undertakings to keep closer tracker of the costs of their operations and to avoid cross-subsidisation. Such clarity in the accounts is the minimum which European taxpayers can expect as they see 35 billion euros injected into Europe's railway system every year in the form of investment in infrastructure and compensation for public service obligations. Here too transparency is a must.

The legal framework must ensure this, both in the form of the clear rules in the European directives which the States have to incorporate into their national legislation equally clearly as early as possible and by implementing the Community rules on competition applicable to undertakings and State aid.

Directive 2001/12/EC also provided for the Commission to set up a system for permanently monitoring developments on Europe's railways.

Accordingly, the Commission has laid the foundation for a market surveillance mechanism based on permanent monitoring of relevant statistics and indicators allowing rapid detection of trends in the railway sector as a result of the measures already taken.

This mechanism, devised together with the Member States and all involved in the railway industry, is a valuable means of gauging how fast the railway industry is adapting to its new European dimension. It will be extended to the candidate countries from the start of 2002. It can be used to underpin the new measures proposed in this second package and to monitor them in the field.

Shortcomings remain in the legal and technical framework.

Lack of interoperability on the European network is one of the biggest obstacles to providing pan-European services, particularly for goods. Since the early '90s the

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[2] OJ L 75, 15.3.2001.

European Community has been working intensively in this field, starting with the high-speed network now being developed. Adoption in the near future of the technical specifications for interoperability for high-speed rail services, the fruit of five years' work by hundreds of experts from the railway industry, railway undertakings and infrastructure managers mobilised by Directive 96/48/EC, will clear the way for transferring this expertise to the conventional railway network. Adoption of Directive 2001/16/EC by the Council and the European Parliament allowed an immediate start to be made on the necessary technical work, which is now underway.

The discussions within the Council and the European Parliament on the infrastructure package and on the interoperability of conventional rail services coupled with the experience gained from developing the technical specifications for interoperability for high-speed rail services have brought to light a number of shortcomings which could seriously impair effective implementation of the rules decided. In particular, it is time vigorously to tackle the complexity of the railway system which is still suffering too much from the conservatism and protectionism of a century ago. Admittedly, the railways have a long history and the excuse of the long service life of their infrastructure and equipment. But to give railways a chance in the new Europe being built, a sense of urgency must be breathed into them and a framework set up to galvanise the industry to seek solutions to problems which are difficult but not insurmountable if appropriate mechanisms are put in place.

In this context, there is a need to reinforce the existing framework in the following areas:

– rail safety, currently based on national rules adopted at different levels or by the undertakings themselves, must be guaranteed by rules which are made public and which everyone can understand and the national systems in force should move towards mutual recognition or towards European harmonisation;

– interoperability implies participation by all concerned in order to adopt optimum specifications and ensure effective application; it is currently limited to the trans-European network, but must be extended to the entire railway network on which free access to provide international freight services will have to be opened up by 15 March 2008;

– effective implementation of the rules on safety and interoperability calls for establishing mechanisms for rapid intervention in the event of differences of opinion between the various national authorities responsible for these fields in order to find the most appropriate solutions to the problems created by the internationalisation of railway services; this role will be delegated to the railway agency which must provide a constant driving force for progress towards harmonisation of the technical regulations and safety rules;

– accession by the Community to OTIF (Intergovernmental Organisation for International Carriage by Rail) which can draft rules of law providing useful additions to the Community provisions and/or extending them to other European and non-European states;

– extension of rights of access to infrastructure for domestic freight services to reduce empty journeys to the absolute minimum;

– opening-up the international passenger market, taking account of the links between these services and the public service obligations applicable to national and cross-border services;

– guaranteeing the quality of service to be provided by means of recognition of the rights and obligations of customers vis-à-vis railway undertakings.

Scope of this communication and of the proposals made

This communication is divided into two parts:

– part 1 entitled "five proposals for rapid progress towards an integrated European railway area" provides a concise, consistent overview of all the legislative measures proposed by the Commission in this package. There are five proposals forming a whole: (1) the proposal for a Directive on safety, (2) amendments to the Directives on interoperability on the high-speed and conventional rail systems, (3) the proposal for a Regulation on the European Railway Safety and Interoperability Agency, (4) the draft recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the Convention concerning International Carriage by Rail (COTIF) and (5) amendments to Directive 91/440 to extend rights of access to railway infrastructure to domestic freight services;

– part 2 entitled "ways to make the railway market more dynamic and improve quality: future action" contains analyses of the situation with rail freight and international passenger services which have prompted the Commission to consider taking legislative and other non-binding measures in due course to improve the quality of service and make rail transport in general more attractive. These measures follow up the White Paper "European transport policy for 2010: time to decide"[3].

All the measures proposed or planned in the railway sector must, of course, fit in with the other measures not covered by this communication such as the Community programmes to promote the trans-European railway networks (TEN budget, support from the Structural Funds, including the Cohesion Fund and ISPA, EIB loans), intermodality (Marco Polo) and measures for other modes, particularly for charging for use of road infrastructure. Of particular importance is the role of both technical and strategic research and innovation, which are of critical importance to the success of the New Railway Package. The continued development of the European Research Area together with the Research Framework Programmes and the establishment of European Rail research Advisory Council (ERRAC) will provide the necessary instruments in that field. Finally,

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[3] COM(2001) 370.

all the measures proposed take full account of the railway systems in the accession countries.

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1. FIVE PROPOSALS FOR RAPID PROGRESS TOWARDS AN INTEGRATED EUROPEAN RAILWAY AREA

1.1.Developing a common approach to rail safety

1.1.1. Safety in an integrated area: the need for a common approach

Since the first steps towards a single market for rail transport services were taken with Directive 91/440 it has been evident that safety is one of the main obstacles on the way to further market opening. Differences in railway safety regulation and different national safety requirements are principal reasons behind the fact that international rail transport still is mainly managed in the old way, by national operators handing over trains and responsibilities at the borders.

Through the directives on interoperability, 96/48 (on the high-speed rail system) and 2001/16 (on the conventional rail system), essential requirements for safety on sub-system level have been defined and further specified by technical specifications for interoperability (TSI). The TSI are, however, not applicable to the existing railway equipment and do not cover overall requirements on safety and the managerial and regulatory aspects.

Directives 95/18, on licensing, and 95/19, which among other issues deals with safety certification of railway undertakings, did very little to improve the situation. They provide that an EU licence should be issued and that it could be combined with national safety certificates covering the different territories of operation by a railway undertaking. However, there are few – if any – examples of a railway undertaking carrying out international services under the provisions of the directives.

The infrastructure package, Directives 2001/12, 2001/13 and 2001/14, introduced only minor adjustments to the safety regulatory framework by obliging the Member States to take responsibility for laying down and enforcing safety rules and standards and for ensuring that accidents would be investigated. When agreement was reached by the Council on the infrastructure package in December 1999 the Commission consequently announced its intention to complete the legislative framework with a Directive on railway safety.

Currently there are different national approaches to railway safety, different targets and different methods applied. Technical standards as well as requirements on staff and management organisation differ from Member State to Member State and the process to approve rolling stock or certify staff or railway undertakings has not been adapted to the needs of an integrated European rail system. Even though there are many safety requirements that emanate from technical and operational differences of the networks there is also in the sector a lack of understanding of the different national approaches and sometimes mutual suspicion that have their origins in lack of knowledge and absence of transparency.

The restructuring of European railways has led to the separation of functions between infrastructure managers and railway undertakings, a process that is still evolving. Many regulatory functions have been transferred from the railway bodies themselves to public authorities, bringing rapid changes also to the way safety is regulated and managed in the sector. During this transition it is essential that the roles of the different players be clearly defined and that responsibilities for managing, regulating and enforcing safety are redistributed in a similar and harmonised way in Europe.

Safety performance of the rail transport mode in Europe is generally very good, in particular in comparison with its main competitor, road transport. Introduction of centralised traffic control, automatic train protection systems, more crashworthy vehicles and modern safety management has reduced fatality rates substantially during the last 30 years. The number of passengers killed in accidents average around 100 a year in the Member States and total fatalities (primarily car occupants on level crossings) are about 800-900, whereas more than 40 000 people are killed on the roads each year.

Safety levels of rail as compared to other modes

Deaths per 100 million persons km	
Motorcycle/moped	16
Foot	7.5
Cycle	6.3
Road (Total)	1.1
Car	0.8
Ferry	0.33
Air (public transport)	0.08
Bus and coach	0.08
Rail	0.04

Deaths per 100 million hours	
Motorcycle/moped	500
Cycle	90
Foot	30
Car	30
Air (public transport)	36.5
Road (Total)	33
Ferry	10.5
Bus and coach	2
Rail	2

Exposure data for travel risk assessment: current practice & future needs in the EU, ETSC, Brussels, 1999

Accidents happen however and whenever they occur they reveal weaknesses in railway safety and illustrate further risk reduction potentials. The high impact on public opinion of multiple-fatality rail crashes is evident and pictures from the accident scenes of Eschede (Germany) and Ladbroke Grove (Paddington Station, United Kingdom) remind us of the possible catastrophic consequences of human errors or technical failures in rail transport. In a society where such accidents are less and less tolerated, efforts should be made to further reduce risks without endangering the competitiveness of the rail mode.

With the emerging single market for rail transport services and supply of railway equipment such efforts need to be coordinated and harmonised at European level.

1.1.2. The proposal for a directive on rail safety

The proposed directive on the regulation of safety and investigation of accidents and incidents on the Community's railways addresses four main problem areas related to the development of safe railways in Europe. It applies a gradual approach to harmonisation and the development of common principles, taking into account the great differences that exist between the Member States.

The first and most important task in the evolving restructuring of European railways is to **modernise and harmonise the safety regulatory structure** and the content of safety rules in the Member States and at European level. This is to ensure that responsibilities are defined and distributed in a common manner and that safety is ensured through the restructuring process. The directive states that infrastructure managers and railway undertakings bear the immediate and operational responsibility for safety on the railway networks and for the control of risks. It provides for the creation of authorities in the Member States with responsibility to regulate and supervise safety and for their coordination at European level. A common minimum set of tasks for these authorities is outlined.

By applying the gradual approach the directive defines procedures for the development of common inspection and assessment methods, common safety methods (CSM). It establishes a mechanism for migration towards common safety rules by a notification procedure, which requires European acceptance of new national safety rules.

The second problem addressed by the directive is the **removal of barriers to further market opening** and the creation of a single European rail system. The safety certificate, granted to the railway undertaking for operation on a specific network, is still recognised as the means to achieve access to infrastructure. In this directive the concept is further developed by introducing common requirements for and common elements of a safety management system that must be implemented also by infrastructure managers.

With a common safety management system for railway operations a certificate granted in one Member State, accepting the safety management system of a given railway undertaking, should be valid throughout the Community for equivalent rail transport operations. In addition the railway undertaking would still need to declare its intention to adhere to national rules and be granted an acceptance of the rolling stock and staff used for each of the networks it intends to operate on.

For the creation of the single European rail system it is equally important to increase confidence between players on the market and between Member States. For that purpose the directive introduces a mechanism to adopt common safety targets (CST) that all railway systems should be able to meet. The common safety methods (CSM) will also be used to assess if the targets are met.

The third problem area addressed by the directive concerns **transparency, information and the application of due process in railway regulation**. The world of the old state-owned monopoly railways was from many aspects a closed world. It was mainly self-regulatory and there was no real need to give information to the public on safety and to apply transparent decision-making rules. With an open market and regulation by public authorities the requirements on the rail sector will increase. It must develop in the same direction as other modes of transport.

The directive introduces common principles for decisions by the railway authorities, requires availability of rules and regulations, stages timetables and makes mandatory provisions for players to be allowed to appeal against all decisions.

Common safety indicators (CSI) are laid down by the directive and will be further developed through the committee procedure. These indicators will render it possible to monitor the development of railway safety in the Member States and at Community level. Railway undertakings and infrastructure managers will be obliged to submit annual reports on the development of safety to their national safety authority which in turn must publish a report each year and make it available to the European Rail Agency. This will further open up the closed structure and enable all players to share experience and gain confidence.

The fourth area addressed by the directive is **investigation of accidents and incidents**. It has showed that there is a great variety in Member State legislation on accident investigations. In many cases accidents are still investigated by the national state railway, or by the police, whereas in some Member States independent accident investigation bodies have been set up. Influenced by legislation for accident investigation in aviation, as provided for at Community level by Directive 94/56, many Member States are moving towards independent accident investigation for other transport modes as well and, in some cases, towards the creation of multi-modal investigation boards, modelled on the National Transportation Safety Board (NTSB) in the USA.

The creation of a single market for rail transport and railway equipment renders it more important to share information and learn lessons from accidents and incidents. Technical failures and operational and managerial deficiencies could be more easily detected and avoided if information were available and spread within the sector. To achieve this it is important to separate the safety investigation from the judicial (police) inquiry. The safety investigation aims at establishing root causes to avoid future occurrences, whereas the police investigation aims at finding the person responsible for a criminal offence, if there is one. The two types of investigations deal with different problems, apply different methodologies and require different skills by their investigators. If they are not kept apart the appropriate lessons will never be learned.

For the sake of public trust in a safety investigation, as well as the confidence of parties involved, an independent body must carry it out. Since root causes of an accident often can be traced back to the regulatory framework for safety the investigation body should also be independent of the safety regulator. The directive sets out the principles of mandatory investigations of serious accidents and incidents, above a defined threshold

level, and provides for the establishment of independent investigation bodies in the Member States.

The safety directive should not be seen as an isolated piece of legislation. It continues on system level what the interoperability directives introduced on sub-system level and it relies on the same committee as is used for the development of the TSI. Thus interoperability and safety will be developed in a consistent and coherent way. The gradual approach is similar to that introduced by Directive 2001/16 on the interoperability of the conventional rail system and will depend heavily on the support of players in the sector and on the European Rail Agency, proposed in this same package. The migration from national rail networks to a single European rail system will take time and require great efforts from all involved and interested in the development. With simultaneous progress of market and safety performance the rail transport mode will be strengthened and given the possibility to exploit its inherent advantages on the transport market.

Proposal No 1

Proposal for a directive on rail safety

1.2.Bolstering the fundamental principles of interoperability

In addition to putting into place a clear framework for safety, construction of an integrated railway area also entails putting interoperability into action for both high-speed and conventional rail.

High-speed rail

Adoption of Directive 96/48/EC of 23 July 1996 set in motion the process of developing the technical specifications for interoperability (TSI) essential in order to achieve interoperability on the high-speed rail network. First, however, this literal revolution in technical harmonisation in the railway sector called for new working methods and for striking new balances between the various players involved. In particular, infrastructure managers, railway undertakings and the railway industry met within the European Association for Railway Interoperability (AEIF) and had to learn to work together to draft TSI. Since these new procedures and instruments had to be fine-tuned, it took longer than the original estimate of three years to develop the TSI. They are now expected to be adopted by the end of 2001 and to enter into force towards mid-2002. A programme for developing the corresponding European standards was launched in 1998 and is updated regularly in the light of the preparatory work on the TSI.

Meanwhile the network continues to develop, with a series of new services expected to be introduced in the next five years, and the process of putting interoperability into action must be speeded up by taking measures on three fronts:

– coordinate investment by different Member States in cross-border projects more closely: the return on such projects is greater if the full capacity of the infrastructure can be used as soon as it is brought into service. In 2002 a mechanism for coordinating

investment will be proposed as part of the measures to coordinate the policies, as provided for in Article 155(2) of the EC Treaty;

– apply the TSI before they are published to major maintenance work and renewal of high-speed lines already in service. This was not explicitly provided for in Directive 96/48/EC but was added for conventional rail. It has been included in the annexed proposed amendments to Directive 96/48/EC;

– provide financial support for application of the TSI from the budget for trans-European networks.

Conventional rail

Like the directive on high-speed rail, the directive on the interoperability of the conventional rail system[4], adopted on 19 March 2001, introduced Community procedures for preparing and adopting TSI and common rules for assessing conformity with them.

The directive requires a first group of priority TSI to be adopted within three years, i.e. in 2004, in the following areas: control/command and signalling; telematic applications for freight services; traffic operation and management (including staff qualifications for cross-border services); freight wagons; and noise problems deriving from rolling stock and infrastructure.

Drawing on the experience gained with high-speed rail, the Commission did not wait until the directive was published to make a start with the preparatory work. The AEIF experts are already working on identifying the critical components in terms of interoperability. Six months after the directive was published, the Commission has already obtained formal agreement from the regulatory committee on the first work programme, on the designation of the AEIF as the joint representative body and on the AEIF's mandate to develop the first group of TSI.

Although lessons can be learned from the experience already acquired, the difficulties of adoption of TSI for conventional rail should not be underestimated. The system already exists and is not yet to be built, there are more and bigger technical and operational differences and the players involved are more diverse.

These reasons have led the Commission to propose progressive adoption of the TSI, starting with those expected to bring the greatest socio-economic benefits. Nevertheless, care must be taken to manage firmly the process of drafting and revising the TSI.

The need to update the interoperability directives

Several factors prompted the Commission to propose amendments to the two interoperability directives:

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4 2001/16/EC.

– in its resolution of 17 May 2000 the European Parliament called on the Commission to present proposals for revision of Directive 96/48/EC along the lines adopted for the directive on interoperability of the conventional railway system;

– a number of lessons learned from the work on developing TSI in the high-speed sector led the Commission to propose amendments to the two interoperability directives;

– the annexed proposals to establish an agency and adopt a directive on railway safety mean that some provisions of the two interoperability directives need to be reformulated;

– the complete opening up of the railway network to freight services implies the need for interoperability on the whole network. It is therefore necessary to extend the geographical scope.

For this reason, this package includes a proposal for a directive amending Directives 96/48/EC and 2001/16/EC and giving full details of the reasons for each individual amendment.

Proposal No 2 Proposal amending Directives 96/48/EC and 2001/16/EC

1.3.Setting up an effective steering body: the European Railway Agency

1.3.1. The need for neutral expertise at European level

One feature of the reform of the railways has been redefinition of the roles of the players on the market and of the public authorities. In the past when national public monopolies existed side by side it was impossible to distinguish clearly how these responsibilities were shared. In most cases technical standards and safety regulations were set by the railway undertakings themselves. This posed no problem from the competition point of view since the markets were not open in any case. At international level, this model gave rise to private cooperation between national operators who laid down the technical regulations and rules on international traffic jointly within the UIC.

With the opening-up of rights of access and the progressive establishment of a truly European rail market, regulation by the public authorities has become necessary to create equal conditions of competition for all operators on the market. Direct regulation by the historic operators must therefore be replaced by regulation by the public authorities at European level, particularly for drafting technical and safety rules.

Naturally, rules of this kind cannot be conceived and drafted without direct participation by experts from the industry. A new balance will therefore have to be struck ensuring not only representative participation by the industry in drafting European rules but also that these rules fit into the Community legal system and are adopted by the public authorities within that framework.

In response to this new demand, the public authorities must be given the means to perform this regulatory task in a balanced dialogue with the industry. In order to achieve this, the first step must be to put an end to one major imbalance in terms of expertise: at the moment there is no public centre of technical expertise at European level while in many Member States the Ministry of Transport or regulatory agencies do not always have the resources to conduct technical talks with the industry on equal terms.

For this reason the Commission proposes creating a centre of technical expertise on railways at European level in the form of an agency.

In particular, the specialisation and expertise required are arguments against direct involvement by the Commission. The White Paper on European governance[5] served as a reminder that the Commission must concentrate on the tasks conferred on it by the Treaties and avoid having to assign resources to over-technical tasks.

It therefore became clear that the most appropriate instrument for performing these technical tasks with experts from the industry would be an agency. This solution had been under consideration since 1996[6] and was recommended again in NERA's study for the Commission on railway safety[7]. This approach was confirmed by the September 2001 White Paper on "European transport policy for 2010: time to decide"[8] which opted for the principle of a Community structure.

1.3.2. An agency to serve all players

The Community spends approximately € 2 600 million a year on financing railway projects (TEN, Cohesion Fund, Structural Funds, ISPA, Research Programme, etc). The Agency's estimated annual budget is equivalent to less than 0.6% of this total and will allow far more efficient use of the Community resources by ensuring the interoperability of the projects funded and allowing a common approach to safety.

The proposed railway agency will have no autonomous decision-making powers. It will provide technical support for decision-making and act as an advisory body.

In order to draft the texts provided for by the directive on rail safety and to steer the work on interoperability, the public authorities need a technical body to prepare and support decision-making. The Agency will therefore be responsible for steering and coordinating all these tasks and for maintaining contacts on technical matters with the relevant professional bodies.

The figure below shows how the Agency's primary technical support function fits into the decision-making process.

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5 COM(2001) 428, 25 July 2001.

6 Commission White Paper "A strategy for revitalising the Community's railways" (COM (96) 421 final).

7 NERA final report "Safety regulations and standards for European railways" (February 2000).

8 COM(2001) 370.

The procedure is the same for all recommendations made by the Agency: the technical parts will be prepared and drafted by groups of experts from organisations representing the industry, such as the AEIF for the work on interoperability today. These groups will be steered and coordinated by the Agency. The drafts will be submitted to the Commission for approval following the procedure laid down by the relevant directives, i.e. with the approval of a committee of representatives of the Member States.

In this role of supporting decision-making the Agency will have to consult the social partners through the existing channels for social dialogue and will have to consult representatives of railway customers.

The Agency's second function is to advise on matters relating to rail safety and interoperability. Primarily this entails giving the Commission and the Member States technical advice within the committee set up by the interoperability and safety directives.

Directive 2001/14/EC calls on the Member States to set up regulatory bodies to monitor the conditions for access to the market in particular. In addition, the committee set up by Directive 2001/14/EC could be asked to give an opinion on cases concerning rights of access to infrastructure. Safety or interoperability issues could arise in the cases drawn to the attention of these regulatory bodies or of this committee when players from several Member States are involved.

It is therefore essential to be able to ask for a neutral technical opinion in such cases. The national authorities will be able to ask the Agency for an independent technical opinion.

Finally, the Agency must be at the hub of a network for gradually building up greater mutual knowledge of the national railway systems, making it possible to build up confidence and dynamic working relations between all concerned. In order to achieve this, the Agency will, for example, be responsible for organising cooperation between the national safety authorities or between the notified bodies designated under the interoperability directives.

The Agency will therefore serve all players in this sector, whether institutions or on the market. In all its tasks, the Agency must take full account of the enlargement process and of rail links with third countries. The Agency will also be open to participation by non-EU European countries.

Proposal No 3

Proposal for a regulation establishing a European Railway Safety and Interoperability Agency

1.4.Clarifying the role of the Community in OTIF

The Intergovernmental Organisation for International Carriage by Rail (OTIF) has as its members all the Member States of the Union, all the candidate countries which have railways and some countries in Africa and Asia (40 countries in all). The instrument applied by OTIF is the Convention concerning International Carriage by Rail, signed in

Bern on 9 May 1980 and amended by the Vilnius Protocol signed in Vilnius on 3 June 1999.

The Convention, as amended by the Vilnius Protocol, covers:

– Uniform rules concerning the international carriage of passengers by rail (CIV), a field in which the Community has not yet taken action but intends to do so to reinforce passengers' rights, as it has done already in the case of air transport;

– Uniform rules concerning the international carriage of goods by rail (CIM), a field in which the Community has not yet taken action but intends to do so to promote the quality of rail freight services;

– Regulation concerning the international carriage of dangerous goods by rail (RID), a field in which the Community has incorporated the results of the work done by the OTIF into the Community legislation (cf. Directive 96/49);

– Uniform rules concerning contracts of use of vehicles in international rail traffic (CUV);

– Uniform rules concerning the contract for use of infrastructure in international rail traffic (CUI): this field is partly covered by Directive 2001/14 which contains rules on relations between the infrastructure manager and the railway undertakings; the Community intends to go far further than provided for in the CUI;

– Uniform rules concerning the validation of technical standards and the adoption of uniform technical prescriptions applicable to railway material intended to be used in international traffic (APTU) and uniform rules concerning the technical admission of railway material used in international traffic (ATMF): these fields are now covered by Directives 96/48 (interoperability of high-speed rail system) and 2001/16 (interoperability of conventional rail) and can be considered the exclusive responsibility of the Community.

The Vilnius Protocol is open for ratification, but no Member State has ratified it to date.

Community competence in the railway sector has evolved considerably since the signature of the Vilnius Protocol, as the Council and the European Parliament have adopted the railway "infrastructure package" (Directives 2001/12/EC, 2001/13/EC and 2001/14/EC) and Directive 2001/16 on the interoperability of the conventional rail system. A number of areas in these fields are now the exclusive responsibility of the Community, particularly matters concerning railway interoperability.

Consequently, the Member States can no longer ratify the Vilnius Protocol on their own outside the framework of the Community institutions now that some of the provisions fall within the Community's exclusive responsibility. To allow ratification of the Vilnius Protocol, it is therefore essential that the Community accede to this protocol.

To add to the interest of accession to the OTIF by the Community, a large number of the remaining members of the OTIF will be joining the Community in the near future.

Article 38 of the 1999 Protocol provides that accession to the Convention is open to regional economic integration organisations, an explicit reference to the Community. This directly raises the question of the Community becoming a party to the Convention and to the organisation that administers it. The question was clearly posed in communication COM(1999)617 presenting the proposal for a directive on the interoperability of the conventional rail system, which has now become Directive 2001/16. This stated that: "The Commission will study the case for Community membership of the Central Office for International Carriage by Rail (OTIF) and present its position in 2001".

The Commission recommends that the Community accede to the COTIF and OTIF in order to exercise its exclusive powers in the railway sector and to coordinate the Member States' positions more closely in the areas for which they share responsibility.

Proposal No 4

Commission recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the COTIF

1.5.Completing the internal market in rail freight services

The proposal is to bring forward the timetable for opening the rail freight market, for reasons which have become far clearer since adoption of the infrastructure package opened up the market for international freight services only, sending a clear signal on this emerging market. The **White Paper "European transport policy for 2010: time to decide"** adopted by the Commission on 12 September 2001[9] sheds light the present shortcomings as well as the potentialities for rail.

This fits also into the context created by the clear and urgent request made to the Commission by the European Parliament, during the conciliation procedure with the Council, to propose opening the freight market without restrictions to build on the measures already taken to open it in a number of Member States.

Potential operators and investors cannot understand why restrictions still prevent wagons from taking on loads, a situation which cannot fail to put rail at a competitive disadvantage over road. Innovative, encouraging schemes in a number of Member States, where new rail operators of all sizes are appearing, must be allowed to develop without economically unfounded legal restrictions in order to instil confidence in all stakeholders, particularly consignors, who expect this opening of the market to improve quality of service and take greater account of their requirements. It is also important for Candidate

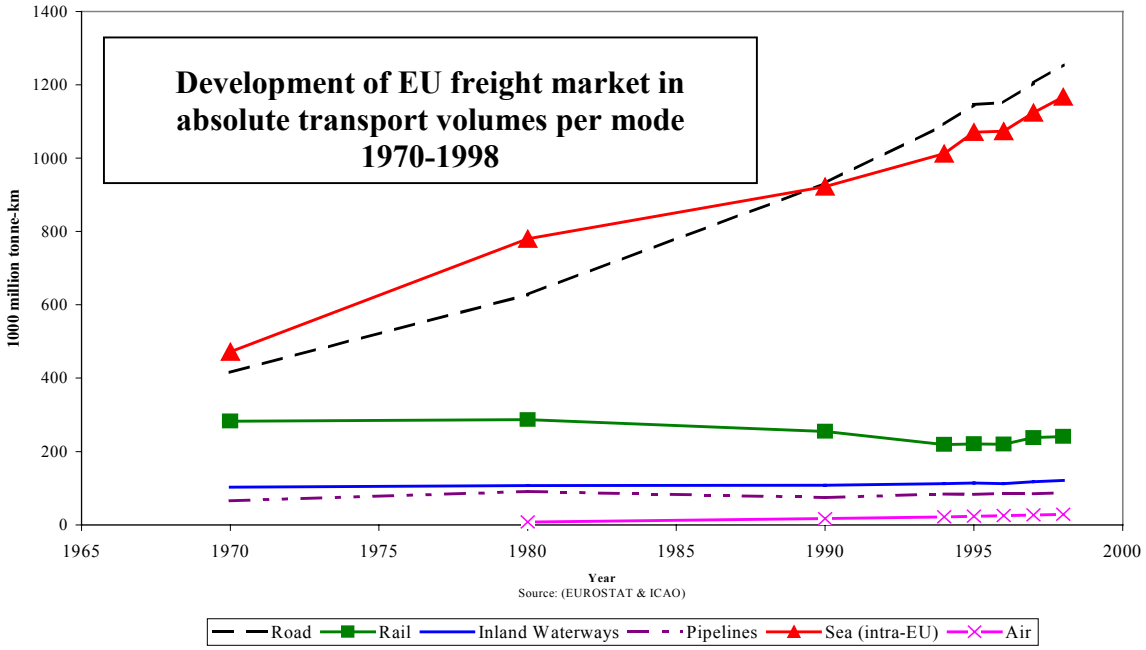
[9] COM(2001) 370. See, in particular, the action programme (p. 105) and Chapter I.B "Revitalising the railways".

countries to take the suppression of these barriers into account, in order to maintain their present modal shift for rail freight, that is already threaten by road transport.

All these arguments are discussed in greater depth below.

1.5.1. The freight market and the rail freight sector in the EU

Quantitative data illustrate the particularly dynamic development of freight activities in Europe and the poor performance of rail freight. In the 1990s, freight transport in Europe was growing significantly faster (ca. 3% per year) than GDP (ca. 2 % per year) hence underlining the high freight mobility intensity of economic growth. In 1999, transport demand was 2970 billion tkm or on average about 20 tkm per person and day. Since 1970, this corresponds to a growth of 121%. Rail freight could not participate in this transport boom. Its modal share dropped from 21% in 1970 to 8% in 1999 and even absolute transport volumes decreased over this period (see graph). At the same time, road haulage increased its share from 31% to 44% reflecting its relative strong competitive position on the market.



The decrease of rail freight transport volumes goes hand in hand with a reduction of the length of the rail network in the Community by ca. 10% since 1970. Also the number of private sidings and terminals in Europe is in sharp decline (5% per annum), with the rate in the EU consistently exceeding the European average[10]. Many customers abandon existing private sidings or do not construct them when setting up a new plant due to

[10] Symonds Group (2001), A study of single wagonload rail traffic, commissioned by the European Commission Directorate-General for Energy and Transport.

relatively high construction and maintenance cost as well as land use legislation often lacking any requirement to set up the plants near railway infrastructure.

Up to the year 2010, the Commission expects an increase of the goods transport volume in the EU by 38% in a business as usual scenario without taking any specific policy measures. The volume of road haulage would rise by 50% whereas rail freight would perform much lower growth (13%) which would result in a modal share of 7%. Against the background of an enlarged Community and further globalisation it is important to underline that international traffic will continue to grow in significance in the years ahead.

Such a development would clearly threaten the efficiency of the European transport system, as congestion effects would aggravate due to serious infrastructure capacity constraints. In the same vein, the trend of the "all road" runs counter the objective of sustainable mobility as the contribution from road transport to environmental degradation is the highest of all modes. As the 2001 White Paper has clearly pointed out, modal contributions to freight transport must be more balanced than in the past. Modes whose potential is not being fully exploited (such as rail freight) should be put in a position to absorb a higher share of future transport growth. For this to happen rail freight in Europe has to increase its competitiveness.

1.5.2. Opening of domestic rail freight markets including the possibility of cabotage to stimulate competition and innovation

The completion of an integrated market for rail freight services remains a major aim of the Community's transport policy. The possibility to enter the rail freight market should lead to a more efficient and competitive industry, that is closer to the customer. It should attract new capital and enterprises, and stimulate the development of new services responding to the requirements of the customers. This is necessary if the continuing decline in the railways' modal share is to be stopped and their financial situation to improve.

In the case of rail transport, the application of the principle of freedom to provide services implies rights of access for individual railway undertakings to the EU rail network. Directive 91/440 took a first step in this direction by establishing rights of access for individual railway undertakings operating international combined transport services. Directive 2001/12, part of the first railway package, extended these rights to all types of international rail freight network, albeit confined to a specified trans-European rail freight network for a transitional period until 2008. In fact, the rights of access set down in Directive 2001/12 represent the culmination of a long debate stretching back to a 1995 Commission proposal for the liberalisation of both international and domestic freight and for international passenger services. Directive 2001/12 was as far as the Council was prepared to go in the context of the railway package as a whole and as the basis for an overall compromise at that time.

Be that as it may, there nevertheless remains a pressing need to apply single market disciplines right across the railway market. The need is particularly acute in the rail

freight sector which, by virtue of continuing restrictions on market entry, is hampered by the lack of effective spurs to improvement in performance which competition, or merely the threat of it, are typically able to provide. Moreover, protectionism renders rail freight unable to compete effectively with other modes, especially road, which are no longer constrained by territorial considerations. The next step, therefore, is to facilitate greater parity of competition with road haulage, where the artificial distinction between international, cabotage and domestic hauls has effectively disappeared. Accordingly, we propose the opening up of all domestic and cabotage rail freight markets. The need to act is given added urgency by the conclusions of the Lisbon European Council of June 2000 that liberalisation of sectors such as transport should be speeded up. In addition, there are increasing calls not only from rail freight customers, but from railway undertakings themselves, for full implementation of the right to provide rail freight services.

Access to rail freight networks for domestic services by railway undertakings other than the national operators is already possible in a number of Member States such as Austria, Italy, Germany, the Netherlands, Sweden and the UK, on the basis of national law. The experience with the effects of market opening on competitiveness and service innovation are generally positive. There are good reasons for this:

- The liberalisation of access for both international and domestic services is necessary to allow operators to offer comprehensive services with full logistic support;

- Competition for international and domestic services will provide incentives to improve the quality of the services;

- The opening of domestic markets would promote the emergence of short line operators with a local base and provide incentives to improve the performance of feeder services to increase, for instance, the viability of (European) wagonload services;

- The possibility of cabotage would increase the scope for increasing the wagon load factor through a reduction of empty backhauls. This would help the railway undertakings to increase the efficiency of wagon use.

Hence, the Commission proposes that all railway undertakings established and licensed in the European Union will be granted access to the railway network for domestic and international rail freight services from the date of implementation of this Directive on. The concept of limiting access for international rail freight services to the trans-European rail freight network (TERFN), introduced in Directive 2001/12/EC as a transitional arrangement until 2008 at the latest, will be repealed.

Proposal No 5 Proposal amending Directive 91/440/EC to open up access to the infrastructure for national services in order to open up the rail freight market completely

List of measures announced in the White Paper "European transport policy for 2010: time to decide"[11] and proposed in this package:

Proposal No 1 Proposal for a directive of the European Parliament and of the Council on railway safety	*Proposal annexed*
Proposal No 2 Proposal for a directive of the European Parliament and of the Council amending Directives 96/48/EC and 2001/16/EC	*Proposal annexed*
Proposal No 3 Proposal for a regulation of the European Parliament and of the Council establishing a European Railway Safety and Interoperability Agency	*Proposal annexed*
Proposal No 4 Recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999	*Proposal annexed*
Proposal No 5 Proposal for a directive of the European Parliament and of the Council amending Directive 91/440/EC	*Proposal annexed*

[11] COM(2001) 370.

2. WAYS TO MAKE THE RAILWAY MARKET MORE DYNAMIC AND IMPROVE QUALITY: FUTURE ACTION

2.1. Conditions for success for rail freight

The foregoing analysis of the rail freight situation and the further details set out in Annex 1.1 point to the need for further action to make this sector truly dynamic. Quality is the key to attaining the desired shift of the balance between modes. The legislative measures proposed in Part 1 are the essential conditions for creating the framework needed for developing rail freight. However, they are not enough and must be backed up by a series of legislative and other measures already announced in the White Paper "European transport policy for 2010: time to decide"[12] and discussed in further detail here to open a dialogue with all concerned.

2.1.1. Ensuring high-quality rail freight services

According to customer surveys[13] one of the most important reasons for customers' dissatisfaction with rail freight services is the mediocre and still worsening service quality, especially for international services. The average commercial speed of international rail freight services, punctuality and reliability of service are far from satisfactory. The operators of combined transport report a dramatic deterioration of the punctuality of combined transport trains over the last few years (see table x) causing significant costs to railway undertakings due to claims from unsatisfied customers, inefficient asset utilisation and profit on lost turnover.

The importance of high-quality rail freight services for improving the environmental performance of freight transport, in particular in mountainous regions

Rail freight transport has to contribute more than hitherto to easing the environmental pressures of road transport, particularly in sensitive areas such as mountainous regions (e.g. Alps and Pyrenees). The eco-point system for road haulage crossing the Austrian Alps is trying to cap environmental impacts on the Austrian Alpine valleys. This scheme will expire in 2003. Therefore, alternative measures to marry the needs for environmental protection of mountainous areas with the traffic needs of an efficient transport system will have to be found.

The Community already supports, in the framework of the trans-European network policy, the development of major new rail infrastructure across the Alps (Mont-Cenis and Brenner tunnels). However, the size and the cost of the projects are very high and it is of

[12] COM(2001) 370.

[13] See, for instance, Symonds Group (2001), A study on single wagonload rail traffic, p. 95 et seq.

vital importance that rail operators are able to draw maximum benefit from this future infrastructure to make them profitable. Moreover, these projects will be completed only in the long term. It is therefore necessary to improve the existing infrastructure (by the removal of bottlenecks on the lines crossing the Alps and on their accesses) as well as quality of services on these axes to make rail more attractive against road.

Both the Alps and Pyrenees present a natural barrier between important economic regions of Europe, which witness strong traffic growth. Combined rail transport through the Alps accounts for 25% of total traffic; for the Pyrenees, the figure is much lower, around 5%. These figures show that road transport still has a prominent part in this traffic. On the other hand, the traffic flows crossing these mountains lend themselves well to combined transport. The overwhelming part is long-distance transport, and consists of manufactured or semi-manufactured goods. As there are only a few passes through the mountains, traffic tends to be concentrated naturally, and thus offers good opportunity for block trains and shuttles.

It is now time that the service quality of rail improves so that it can make full use of its competitive and environmental advantages to take traffic from road.

The quality problem is particularly acute on certain corridors such as the North-South Alpine crossing between Germany, Austria and Italy where the lack of locomotives frequently causes huge delays at the border. The appalling performance of rail freight has serious repercussions on the other transport sectors and thus on environmental impacts of transport activities in Alpine regions. As road haulage generally takes over the goods transport lost by rail, Alpine countries such as Austria, France and Switzerland suffer increasingly from air pollution and noise emissions from road transport. These countries claim urgent and effective measures for reducing the number of trucks crossing their territory and for shifting freight from road to other more environmentally friendly modes such as rail.

A study[14] commissioned by UIRR, the international association of combined transport, and co-financed by the Commission under its PACT programme analysed the quality problems of rail-based combined transport on 8 major European transport corridors taking into account more than 18 000 annual train movements. The study highlighted clearly that 2/3 of the punctuality problems are caused by malfunctioning rail operations. The report issued a number of recommendations at structural level, at institutional level and at operational/procedural level. The major recommendation on structural measures is to open rail freight markets in order to promote competition. The Commission fully shares this conclusion. The policy advocated by the Commission of charging for the use of transport infrastructure, on the basis of the "user pays" principle, can only be fully effective, if there is a competitive alternative to road transport through the Alps. In order to fulfil the expectations, adequate rail infrastructure capacity has to be ensured, investment in appropriate rolling stock has to be made and most important of all the

[14] UIRR (2000), A Quality Strategy for Combined Transport – The beginning of a transformation, Final report, 21 November.

quality of rail services has to be improved swiftly. Wider introduction of piggyback services (Rollende Landstraße) can be seen as a quick solution to Alpine transport problems; however, it does not constitute a strategy to stimulate modal shift for long-distance traffic. On the contrary, it tends to add to the attraction of long-distance road haulage.

The Commission proposes a number of measures to address the issues of environmental impacts of goods transport and modal shift in mountainous regions and in particular in Austria as announced in the report from the Commission on the transit of goods by road through Austria (COM(2000) 862, paragraph 1.6.3):

- A European approach to securing a high level of quality for rail freight services in Europe is explained in more detail in this chapter.

- The Commission intends to present a Framework Directive on transport infrastructure charging including the pricing for environmental effects of transport activities for all transport modes.

- In the context of the trans-European transport network policy, the Commission has decided to intensify its support for the development of cross-border rail infrastructure in areas characterised by natural barriers.

- The Commission has launched a large-scale thematic network "Alpnet" within the fifth framework programme for R&D activities and will, after conclusion of this exercise at the end of 2002, make full use of the knowledge gained to encourage further rail transport in and through the mountains.

- The Marco Polo programme, which should be operational by 2003, will give important support to all suitable actions in the market improving the quality and performance of rail transport in these sensitive areas.

Punctuality of UIRR trains compared to programmed arrival time 1999 – 2001 (in %)

	Trains on time Delayed by ≤0.5 h	Trains delayed by > 0.5 h	Trains delayed by > 3 h	Trains delayed by > 24 h
1999	60	40	17	3
2000	48	52	28	5
2001 (1st semester)	42	58	32	7

Source: UIRR (2001)

One major reason for the low quality performance is the lack of responsibility of any one railway undertaking for the good execution of the entire international service in the traditional cooperation mode. Various quality initiatives by the railways[15] have shown that rigorous quality management on specific corridors can improve quality significantly. However, railway undertakings have not generally applied such quality management to all international services. The objective for railways must be to regain an image as a reliable, high-quality service in order to compete successfully and to absorb a higher share of expected future growth on the freight transport market.

The Commission expects that the complete opening of rail freight markets and the ensuing increase of competition will provide the necessary incentives to railway undertakings to improve the quality of their services. However, market opening is likely to show tangible effects only in the medium term, as the rise of competition will be gradual. In the short term, specific measures to improve service quality must be taken in order to re-establish the confidence of customers in rail freight services. The Rail Market Monitoring Scheme set up by Directive 2001/12 will closely monitor the development of service quality on the European rail freight markets on the basis of a number of key indicators.

The Commission proposes three specific measures to address the quality issue.

(i) The Commission intends to propose an amendment of Directive 2001/14 in order to enable authorised applicants other than railway undertakings to apply for train paths. An authorised applicant in rail freight could be, for instance, a shipper or a forwarder with an interest to use the rail mode to transport significant and, over time, fairly stable cargo volumes. If the shipper cannot find an offer from a railway undertaking on the market place satisfying his needs, he himself might apply for a train path. This would enable him to design and organise a service, for which he would subcontract the traction to a railway undertaking. The provision of authorised applicants in the regulatory framework would significantly strengthen the position of rail freight customers vis-à-vis the railway undertakings and thus contribute to improving service quality.

(ii) The Commission expects the European rail industry to undertake a number of voluntary measures to improve the incentive structure for service quality. In particular, the European railway undertakings should undertake systematically to include service quality commitments in their contracts with customers in a fair and non-discriminatory way. Based on a common understanding between railway undertakings and customers such quality criteria shall include, for instance, regular and reliable service, market conform arrival and departure time, punctuality, transparent invoicing, etc. (for railway undertakings) and timely presentation of wagons and cargo to the take-over point, etc. (for customers). Performance regimes between cooperating railway undertakings should provide effective incentives for ensuring high quality and making all partners responsible for those risks under their control. Furthermore, European railway undertakings should

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[15] For instance, the UIC quality project SAPPI Gmbh in 1999 and various national projects.

undertake voluntary action to improve their operational procedures especially for international services in a joint effort with their customers.

(iii) Complementarily, the Commission intends to propose a Regulation that will lay down the terms of compensation in case of non-compliance with contractual service requirements. This legal act will provide effective incentives to both parties, railway undertaking and customer, for ensuring a high level of service quality. Such incentives will be defined according to common principles. They should be financial in the form of a compensation scheme or a "bonus/malus" performance scheme with appropriate sharing of risk and reward, avoiding rewards for simply doing what was contracted. The incentives should apply to the whole product rather than to just parts and they should embrace risks that are controllable by the railways and the customers respectively.

The elements of a future European approach to service quality in rail freight are discussed further in Annex 1.2.

2.1.2. Overcoming entry barriers to pan-European rail freight services

The past experience with attempts by railway undertakings to enter the market for rail freight services, either at national level or at international level, has shown that new entrants, including existing operators outside their country of origin, face a multitude of entry barriers. Especially newcomers have to spend a considerable amount of time and resources to overcome such hurdles before they can start providing services. Here is a typical example: each railway undertaking needs traction for its wagons, but newcomers will have difficulties to obtain the traction they need, as there are only a few, very small second-hand markets or markets for leasing locomotives. If they get a locomotive, the locomotive driver cannot cross borders routinely as national regulations governing their training curricula and examination conditions are different. The locomotive has to be equipped with an automatic train protection system (ATP) to obtain the safety certificate. However, ATP systems usually all differ from country to country and it is difficult, especially for a small railway undertaking, to buy and to fit such a system to its locomotives as there are no second-hand markets. In addition, monopolistic suppliers charge very high prices and have long delivery times.

Once operational and after having received a train path the railway undertaking also needs access to service facilities to get, for instance, traction current, diesel fuel, access to stations and to shunting services as well as maintenance and repair services. Often there is a risk that the independent railway undertaking does not obtain the service for a competitive price or not on the same conditions as the national rail operator.

A further challenge for railway undertakings that want to carry out international services can be the customs transit procedures. National railway undertakings have been taking advantage of a specific simplified transit procedure. This procedure provides among other facilities for the waiver of guarantee and of transit-related border formalities that ease the provision of international services significantly. However, the conditions that have to be complied with to qualify for the simplified procedure (e.g. the requirement to carry goods in each country by a separate railway undertaking, to break down transport costs for each

of the countries whose territory is entered during a given transport operation and to hold records for inspection by customs in a central accounting centre to be set up by the railway undertaking in each country) cannot be fulfilled, or only under economically unreasonable conditions, by independent railway undertakings or for transport operations under open access conditions. Thus these conditions are hindering the development of open European rail freight markets and impeding competition.

In order to reduce market entry barriers, the Commission proposed three concrete actions:

i) Swift, coordinated implementation of the European Rail Transport Management System ERTMS will be instrumental in overcoming the entry problem with national ATP systems. The ERTMS command and control system will be able to fulfil the same functions as the national ATP systems. Coordinated implementation would also have the advantage of reducing the costs of backward compatibility with existing national command and control systems. Therefore, the Commission, in cooperation with the Interoperability Committee, intends to ensure coherent national ERTMS deployment plans for conventional rail systems.

ii) The Commission considers that non-discriminatory access to service facilities is vital to foster competition on rail freight markets. Regulatory bodies will have to play a decisive role in this. In order to enable national regulatory bodies to fulfil this role, the Commission intends to make a proposal to amend Directive 2001/14 to reinforce the powers of rail regulators with respect to ensuring non-discriminatory access to services and service facilities.

iii) The Commission intends to make proposals in 2002 for defining the conditions under which all railway undertakings can benefit from simplifications of the Community customs transit procedure in a transparent and non-discriminatory manner taking due account of the liberalised regulatory framework for European rail freight. This would also foster the competitiveness of transit traffic by rail in particular through Switzerland.

Entry barriers and measures to overcome them are discussed in more detail in Annex 1.3.

2.1.3. Developing the infrastructure for efficient European rail freight services

Inefficient use, lacking interoperability, low priority for freight in train path allocation as well as technical and physical insufficiencies are major stumbling blocks to the development of European rail freight. In order to promote swift penetration of interoperability specifications, the Commission will establish a link with Community financial support to trans-European rail infrastructure projects, i.e. introduce an interoperability condition for Community funding. Rail infrastructure managers have to cooperate internationally in order to ensure better utilisation of existing infrastructure. Instrumental in that would be better harmonisation of (slow and fast) traffic flows when allocating international and national train paths while attributing due importance to international freight. In order to optimise the network, the concept of a European core network for high-quality rail freight services should be further developed. The concept

envisages using the existing infrastructure but attempting to separate where possible the different types of traffic, mainly according to speed, and to give priority to freight on certain major axes. Upward harmonisation of key quality parameters such as train length, loading gauge and axle load, in the framework of the interoperability process, would allow a significant improvement of service economics and performance.

The Europeanisation of rail freight services increases the needs of competitive railway undertakings and infrastructure managers for efficient data exchange and information systems (e.g. for fleet management, timetabling, tracking and tracing, customer relations, etc.). Although there are national information systems, problems arise when it comes to international traffic. The protocols defining the data format and the network interfaces generally do not match. In order to address the technical aspects of interoperable information systems the Commission has mandated AEIF swiftly to develop the technical specifications for a European rail data exchange system in the framework of the interoperability process for conventional rail systems. Turning to the operational aspect, the Commission encourages the enterprise sector (e.g. railway undertakings, logistics integrators, or forwarders) to take the initiative to set up a commercially managed data exchange platform once the technical specifications for freight telematics applications become available. For implementation of such a concept fostering intermodal transfer, the industry could request Community support under the future Marco Polo programme.

Annex 1.4 provides further details on the measures envisaged to improve the infrastructure for European rail freight.

2.1.4. Improving the environmental performance of rail freight to foster its contribution to sustainable mobility

Rail is a relatively environmentally friendly mode of transport. However, rail freight must improve its performance in terms of noise emissions and diesel engine emissions if it does not want to fall behind other modes such as road haulage that recently have been making significant progress in their environmental performance. Noisy freight wagons that wake up urban dwellers when passing through the city at night and smoking diesel locomotives are at the centre of criticism from a European population that is becoming more and more aware of environmental issues.

The Commission intends to address the noise issue for new freight rolling stock through ambitious noise limit values set in the framework of the interoperability process. The Commission also intends to take account of cost effectiveness when working towards such values. In order to exploit the potential for reducing atmospheric emissions from diesel locomotives, the Commission will propose to amend Directive 97/68 on emissions from internal combustion engines to include (light duty) rail diesel engines and to set cost-effective but bold emission limit values. Emissions from heavy-duty diesel rail engines will be tackled through limit values within the interoperability process for conventional rail. Member States are encouraged to combine the limit value approach defining a minimum abatement level with an economic instrument such as an emission-based infrastructure charge in order to reach higher levels of abatement if desired.

However, it is essential for an effective policy on rail freight noise to act also on the existing fleet especially as the investment cycles for rail rolling stock are particularly long. The Commission will enter into a dialogue with the industry to assess cost-effective options including voluntary measures by the industry for rolling stock noise abatement (e.g. through retrofitting with less noisy composite brake blocks) and the reduction of atmospheric emissions from diesel rail engines (e.g. through retrofitting or ex-post engine optimisation).

The environmental measures for European rail freight are discussed in more detail in Annex 1.5.

2.2. Developing high-quality international passenger services

Active provision of high-quality passenger services will be one of the best means to achieve a modal transfer from car and plane towards train services and to contribute to the objectives of the common transport policy and the White Paper. To achieve this transfer, it will be necessary to have a common analysis and understanding of the problems which occur in the provision of passenger services, and to develop and implement measures to address these problems and to solve them. For the Commission, this is not a new problem. As a matter of fact, the Commission has received and still continues to receive many complaints and requests from individual citizens and interest groups to address the problems in this sector and to draft proposals aimed at improving the current service levels. The complaints and suggestions vary, but mostly address the punctuality of services; the availability of information on fares, timetables and delays; the accessibility of trains for persons with reduced mobility (PRMs) or for persons travelling with their bikes. Healthy and secure travel conditions as well as security and safety in trains and on stations are frequently mentioned in complaints addressed to the Commission. Finally, complaint handling procedures for insufficient service levels or unfair contracts as well as the lack of involvement of the users in consultation procedures concerning timetables and opening or closures of services or entire lines have been quoted by different user organisations.

This leads the Commission to consider two aspects to improve the situation. First, the introduction of regulated competition for both national and international passenger services and, second, the affirmation of passenger rights. A detailed description of the current situation in relation to international passenger services, the Community's existing legal framework as well as the new proposals is given in Annex 2 to this communication. A substantial input to the description of the current situation has been provided by a study carried out by OGM-consultants and a hearing for user and passenger organisations organised by the Commission in Brussels on 15 October 2001.

2.2.1. The case for a progressive opening of the market

First of all, the present legal situation allows for access rights for international groupings. Directive 91/440 gives access rights for international groupings which provide international rail passenger transport. According to Directive 95/18, a licensed railway

undertaking may request a licence in a Member State and form a grouping with another licensed railway undertaking or even with an affiliated railway undertaking.

Second, experience within the Member States shows that regulated competition is associated with more efficient and attractive passenger rail services. Sweden and the UK, the two States that have made most use of regulated competition, are also the States where passenger rail traffic has grown most rapidly since the mid-1990s. Other Member States that have used regulated competition on a smaller scale for regional services – including Germany, Portugal and the Netherlands - also report good results.

For these reasons, in 2000 the Commission adopted a draft Regulation[16] on public services in public transport. This states that in almost all cases financial compensation or exclusive rights for the operation of passenger rail services should be awarded through regulated competition. This proposal is currently under consideration by the Council and the European Parliament. Not only will it lead to better rail service, it will also substantially reduce the risk of existing subsidies and exclusive rights for rail operators being challenged and overturned under the provisions of Community competition law.

The provisions of this draft Regulation apply to international as well as domestic services. However, a study on the development of international rail passengers markets by OGM[17] showed that there is a widespread view that international rail services do not receive financial compensation and are not protected by exclusive rights. This assessment will need to be revisited following the adoption of the draft Regulation.

In the light of this situation, it is appropriate to consider the options available for a meaningful opening of the market for international rail passenger services.

The thorough assessment of the structure and size of the market for international passenger services, as made in the OGM study, allows the identification of 5 segments with distinct features and addressing different users. The first segment is made up of the regional cross-border services for commuting or tourist trips, which do not go beyond 80-90 km. These services mainly serve citizens living in border areas of one Member State who work in another. Long-distance intercity services are to be found in the second segment. This type of services is, together with the international high-speed services, the best known, and mainly serves the leisure and business traveller markets. The high-speed services segment only started with the introduction of dedicated high-speed lines. It is a segment which has been very successful in achieving a modal transfer. The best example of this can be provided by the dramatic shift from air and car travel to rail on the Brussels-Paris link. A fourth segment is made up of "regular niches": night trains and car-sleeper trains, which are of great importance to the leisure market. Finally, the market for

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16 COM(2000)0007 Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway (presented by the Commission), OJ C365E, 19 December 2000, p. 169.

17 OGM study on the development of (international) rail passengers markets and policy, to be published in 2002.

occasional services should be mentioned, which consists of seasonal services to wintersport areas or coastal resorts.

Besides the possibilities for market opening offered by the existing Directive 91/440 and the Regulation on public service obligations, additional measures for enhancement of rail passenger services would be more efficient once the regulatory structures foreseen by the infrastructure package directives[18] are implemented. Such enhancement could be achieved through the following steps:

– The first step consists of full opening of the market for regular niches, such as night trains and car sleepers, with the possibility for cabotage, as well as the occasional services. The Paris-Vienna night service for example has many domestic travellers without whom this service could not be run on a profitable basis. This market segment is very limited: less than 20% of all international services are night services, many of which do not allow domestic passengers. Private operators who hire staff and equipment for the service from the incumbent operator already carry out occasional services;

– A second step to further market opening is the full opening of all international services, including long-distance and high-speed services, without cabotage. The high-speed services between Brussels, Paris and London are a good example of this segment: the proportion of domestic passengers on these services is extremely small;

– The last step of the market opening process could then be full opening of the market for all international services with the possibility for cabotage - at least in cases where this would not undermine the effectiveness of exclusive rights awarded following the regulated competition to be introduced by the Regulation on public services in public transport.

The question of the availability of and fair access to rolling stock for new operators should also be examined in further measures to be considered for ensuring fair market access. The Commission will examine further all these issues with a view to making proposals as appropriate.

2.2.2. Improving passenger rights

As announced in the White Paper, the Commission intends to propose in 2003 a Regulation on passenger rights which would include provisions on fair terms and conditions of contracts and their transparency; consumer consultation; complaint handling and out-of-court dispute settlement, as well as compensation and assistance for delays, cancellations, missed connections and seat reservations not being honoured. Improved availability of information in electronic form on fares, tickets, timetables and services will be addressed as well.

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[18] Directives 2001/12, 2001/13 and 2001/14 of 26 February 2001, OJ L 75 of 15 March 2001.

In this context, it will examine the links between national and international rail travel with a view to determining whether and to what extent the rights of consumers in international and national rail travel can in practice be separated. The effects of the proposed Regulation on consumer rights in the candidate countries will also be examined.

The Commission will also examine the case for legislation requiring transport operators to offer passengers minimum standards of service integration.

The rail industry, notably the operators and the manufacturers, will be encouraged to improve service levels by providing better information in electronic form on fares, tickets and timetables. They will also be encouraged to improve quality, safety and security on international services and at stations by providing safe, comfortable and accessible rolling stock for these services.

In particular, rail operators will be encouraged to develop a voluntary charter on service quality covering such issues as punctuality, provision of information in electronic form, accessibility for groups with special needs, such as persons with reduced mobility or persons travelling with their bike, and protection of non-smokers.

In addition, the Commission will promote the setting-up of a European platform of rail passengers organisations, which would negotiate with and be consulted by the railway undertakings and participate in the establishment of regular customer satisfaction surveys.

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List of measures announced in the White Paper "European transport policy for 2010: time to decide"[19] and proposed in Part 2 "Ways to make the railway market more dynamic and improve quality: future action"

Measure No 1 The European Commission intends to propose legal measures and suggest complementary voluntary actions to provide a comprehensive system of quality incentives.	*2002*
Measure No 2 Extension of the scope of the term "applicant" in Directive 2001/14/EC to allow greater numbers of players to reserve railway infrastructure capacity.	*2003/2005*
Measure No 3 Amendment of Directive 2001/14/EC to extend the powers of the regulatory bodies provided for in Article 30 of the Directive to services provided to railway undertakings to ensure non-discriminatory access to such services.	
Measure No 4 Establish a plan for Europe-wide deployment of the traffic management system (ERTMS).	*2002*
Measure No 5 The Commission intends to make a proposal for defining the conditions under which all railway undertakings can benefit from simplifications of the Community transit procedure in the framework of the revision of the rail transit procedures.	*2002*
Measure No 6 The Commission will propose measures to reduce noise emissions from new freight wagons.	*2003/2005*
Measure No 7 The Commission will propose measures to reduce emissions from new diesel locomotives.	*2003/2005*

[19] COM(2001) 370.

Measure No 8 The Commission will enter into a dialogue with the industry to implement voluntary measures reducing noise and emissions from the existing fleet.	
Measure No 9 The Commission will propose to open gradually the international passenger services market.	
Measure No 10 The Commission will propose actively to promote existing passenger rights to the public, and propose a regulation in order to strengthen passenger rights.	*2002*

1. ANNEX 1: LINES OF ACTION TO IMPROVE THE PERFORMANCE OF EUROPEAN RAIL FREIGHT

1.1. Developments and shortcomings in the rail freight market

As a result of nationally organised markets rail freight can be described as a very fragmented sector with often outdated operational techniques and incompatible equipment and, where they exist, largely outdated and incompatible IT systems. It often fails to respond to the needs of customers, and delivers services that are often not competitive especially in international transport. Railway undertakings are often not able to tell their customers the whereabouts of their consignments and services are astonishingly unreliable. Rail freight despite some good examples is on the whole not a benchmark for others. Of course, global figures hide differing performance whether it is between different segments of the rail market or different companies operating in that market[20].

Wagonload formed the traditional core of rail freight traffic. Wagonload services by railways compete with road haulage for the market of small to medium-sized, high-value shipments. This freight market segment achieves a particularly dynamic growth rate and is expected to do so in the future. However, wagonload services are not competitive for various reasons (e.g. high cost especially for marshalling and delivery services at the end point of production, unreliability, lack of customer focus, inappropriate rolling stock, lack of wagon positioning information for customers, etc.). As a consequence, their relative importance has declined considerably, particularly over the past four decades. Even as recently as the late 1980s, wagonload traffic in the EU accounted for nearly 45% of all rail freight traffic. By the late 1990s, its share had declined to about 35%.

Some railway undertakings are abandoning low-volume customers and reducing the number of sidings and stations that their wagonload system serves with the objective of cutting costs. A reduction of traffic volumes and of connected customer sidings has a negative effect on the economics of the system, hence on its cost competitiveness. Clearly, this market segment needs a new European vision to be developed by the market players and better framework conditions to improve its performance on the transport market.

Combined transport was perceived by many railways as a solution to the traditional problems of wagonload operations. The tendency was to establish autonomous combined transport organisations within railway companies (frequently selling space on trains to third parties for retail to customers). However, the inherent change of mode adds extra costs, which cannot be recouped over short-distance rail movements. Furthermore, the

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[20] See, for instance, Observatoire des politiques et des stratégies de transport en Europe (2001), Dossier n°2 Le fret ferroviaire en Europe, October.

payloads which can be carried by each unit are less than those which can be carried by modern wagons, limiting the suitability of combined transport solutions for bulk traffic, particularly for low-value traffic. The greatest success for intermodality has not been in supplanting wagonload traffic, but in entirely new traffic to and from ports, driven by the continuing growth of deep-sea container traffic. This is growing at sustained high rates and is not penalised by a modal transfer to road at the port end.

Trainload operations are well suited to rail, and it has been in this sector of the freight market that rail has performed best over past decades to the extent that it now comprises almost two-thirds of all rail freight traffic. These services have lower total operating costs than equivalent wagonload or intermodal services, and usually offer faster and more reliable transit times. It is also this segment where new entrants – in general, independent railway undertakings - usually try to position themselves.

It is clear that the freight market is not homogenous. Different sectors have substantially differing requirements with regard for example to price, speed, reliability and punctuality. The economics of shipment to the final destination mean that in the vast majority of situations at least a part of the journey will be carried out by road. The economics of rail freight seem to indicate that larger loads over longer distances ought to show a relative advantage for rail freight. However, the level of infrastructure charges affects the ability of railway undertakings to compete with road haulage to a great extent. With low infrastructure charges based on social marginal cost, the break-even point between road and rail corresponds to a distance of ca. 450 km for a single wagonload in international traffic. With high infrastructure charges covering full costs, break-even is around 700 km[21].

The ability of the sector to compete in the various market segments will be influenced by many factors. Effective management and understanding of costs and their drivers, as well as measures to control and reduce costs are primary requirements for competitive rail freight services.

Factors that contribute to the poor performance of rail freight:

i) Railway undertakings are often out of tune with customers' quality requirements in terms of speed, reliability (e.g. to ensure just-in-time delivery) and other service characteristics such as additional value-added services (e.g. packaging, warehousing, distribution, customer information, etc.). For instance, punctuality of trains operated for combined transport on major European corridors has deteriorated dramatically in the last few years. In 1999, only 60% of all trains were on time (i.e. they were delayed by less than 30 minutes)[22]. In the first half of 2001, the percentage of trains on time dropped further to 42%. The quality problem is particularly acute on certain corridors such as the North-South Alpine

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21 Nelldal/Troche/Wajsman (1999). How the railways should solve Europe's transportation headaches, Centre for Research and Education in Railway Engineering, Stockholm.

22 Letter dated 29 August 2001 from UIRR to Commissioner Loyola de Palacio.

crossing between Germany, Austria and Italy where the lack of locomotives frequently causes huge delays at the border.

ii) Service prices are often not competitive either and vary significantly from operator to operator. Case studies on transport of petrochemical goods comparing prices between national railway undertakings and new entrants show that prices of national "flag carriers" can be double those charged by new entrant companies for the same type of service requiring similar resources[23].

iii) Inefficiencies in operation, the use of rolling stock and of infrastructure, are still an important handicap for the railway sector. According to the findings of a Community research project[24], potential cost savings (i.e. some 25% of total current costs or 15 billion per year) could be achieved if all players performed as well as the best. Of this, one third could be allocated to the operation of services and two thirds to the operation of the infrastructure. Mercer consultants[25] estimated the potential savings from better utilisation of rolling stock and staff including a potential to increase loads per wagon by 30%, to reduce maintenance costs per wagon by 40%, to increase locomotive productivity by 25% and to increase crew productivity by 15%. Clearly, some railway undertakings have made considerable efforts in recent years to tap this potential. However, a long road still remains ahead to realise the full potential.

iv) There is still very little competition on national and international rail freight markets. Although the national legislation allows competition in some countries only very few companies are actually competing with the national railway undertakings. Their market share seldom exceeds a couple of percentage points. According to current European legislation, international groupings and combined transport operators could run international services in open access mode. Only very few examples of such services have materialised. Due to the low market share of competitors to the national rail carriers the market provides little incentive for innovation and productivity increases.

v) National railway companies or infrastructure managers - often at the request of Member States' governments - have employed priority rules to determine the use of rail infrastructure. These generally favour passenger over freight services and vary from country to country. Implications for freight are that rail freight services are slower, less reliable and make poorer use of capacity. This makes a discussion at European level desirable to render existing priority rules more consistent and less anti-freight.

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23 IG&H Management Consultants (2001), EPCA rail benchmarking study, 30 October.

24 Halcrow Fox (1999), Profitability of rail transport and adaptability of railways (PRORATA). Project funded by the European Commission under the 4th Framework Programme for transport research.

25 Reinhardt M./D. Schneiderbauer/M. Kadar (1998), Levers of Value Creation for Freight Railways, Mercer on Transport, Volume VI, Number 2.

vi) Infrastructure charges represent a significant proportion of overall production costs for rail. The proportion depends on the level of utilisation of the infrastructure and the type of service but realistically can reach about 30%. A good understanding and the correct attribution of these costs are essential to ensure that rational decisions are made about the operation of services. It is important that this is carried out in a way that does not price marginal traffic off the infrastructure.

vii) Where trains cross from the network of one infrastructure manager to another, or trains are exchanged between two railway undertakings, or control authorities (e.g. safety, customs) are involved, then there is likely to be a need for electronic data exchange. These data needs may increase as more railway undertakings perform services, but in any case today's paper-based systems of data transfer are not appropriate to the needs of the 21st century and lead to delays and unreliable services.

viii) Capacity constraints may constitute a threat to the development of rail freight. Even at modest growth rates the situation will arise where for certain parts of the rail infrastructure commercially attractive capacity can no longer be found, even after steps have been taken to rearrange traffic.

ix) Rail freight's competitiveness suffers to some extent from unbalanced intermodal framework conditions. The absence of a consistent and comprehensive infrastructure charging framework and non-internalised external costs in other sectors such as road haulage leads to a certain distortion of competition between the modes. Additionally, rail freight is put at a disadvantage by the insufficiently enforced social legislation in other sectors such as road haulage.

1.2.The alarming deterioration in the performance and quality of rail freight

According to customer surveys[26], the competitiveness of European railways suffers from a number of problems such as uncompetitive prices, unacceptably late fare quotes, lack of customer orientation and often unavailable information about the whereabouts of wagons and cargo. However, the most important reason for customers' dissatisfaction with rail freight services is the mediocre and still worsening service quality, especially for international services. According to estimates by the Symonds Group the average commercial speed of international rail freight services on major North-South and East-West corridors is typically around 20 km/h in Europe[27]. The punctuality and reliability of service are also far from satisfactory.

In 1999, only 60% of all combined transport trains were on time (i.e. they were delayed by less than 30 minutes). In the first half of 2001, the percentage of trains on time dropped further to 42%. The quality problem is particularly acute on certain corridors

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[26] See for instance Symonds Group (2001), A study on single wagonload rail traffic, p. 95 et seq.

[27] Symonds Group (2001), A study on single wagonload rail traffic, p. 43.

such as the North-South Alpine crossing between Germany, Austria and Italy where the lack of locomotives frequently causes huge delays at the border.

Lacking service quality causes significant cost to the railways. For instance, it has been estimated that under-performance of rail-based, UIRR-sponsored international combined transport operations caused a total cost of € 41 million in 1999[28] (including asset utilisation inefficiency, claims by combined transport operators and profit on lost turnover).[29] It is sometimes argued that this situation is satisfactory as long as the customers have a choice, for instance by turning to a road haulier. From a broader policy perspective, however, this is not acceptable as the poor performance by a dominant railway company results in additional burdens on society.

It is vital for the future of rail freight to take a consistent set of measures to introduce incentives for high-quality service provision into the business relationships between railway undertakings and with other market players such as the clients and the infrastructure managers. For this purpose, the Commission proposes a comprehensive European approach to service quality in rail freight, which addresses railway undertakings, infrastructure managers and rail freight customers.

Directive 2001/14/EC requires establishment of performance regimes that make infrastructure managers and railway undertakings responsible for the quality of their services and contribute to efficient utilisation of the rail network. Such incentives have to be extended to all providers of international rail freight services. In the absence of a sufficient level of competition such a mandatory scheme based on a legal act would provide incentives to improve the performance of European rail freight operations. Some railway undertakings have already agreed to sign performance contracts with their clients for national services[30]. However, in many countries this is not yet the case. Only very few performance contracts for international freight services have been concluded.

Alternatively, the Community could take a compensation approach and determine through Community legislation the conditions and level of compensation payments in case of non-compliance with service obligations.

The European Commission intends to propose legal measures and suggest complementary voluntary actions to provide a comprehensive system of quality incentives.

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28 The sum corresponds to some 6% of total international UIRR revenues of around € 650 million.

29 UIRR/Booz Allen & Hamilton (2000), A quality strategy for combined transport, The beginning of a transformation, final report, 21 November, p. 40.

30 Mainly for combined transport operations but also for some big customers.

This European approach to rail freight service quality consists of 5 elements:

1) Monitoring of rail service quality

The Rail Market Monitoring Scheme (RMMS) will monitor implementation of this European approach to rail freight service quality with the help of appropriate indicators that it will collect. If this approach turns out not to be viable, the Community will legislate in order to establish rail freight service indicators.

2) Voluntary contractual quality commitments

The European railway companies undertake systematically to include service quality commitments in their contracts with customers in a fair and non-discriminatory way. Based on a common understanding between railway undertakings and customers contractual quality criteria shall at least include:

<u>For railway undertakings:</u>

- a well defined schedule for departure and arrival times (obligatory)
- punctuality (obligatory)
- clear responsibility towards the customer for the entire transport chain (obligatory)
- safe and damage-free transport (obligatory)
- providing appropriate and timely information to the customer (obligatory)
- regular and reliable service (obligatory)
- market-conform transport times (optional)
- market-conform arrival and departure time (optional)
- transparent billing (optional)
- adequate and clean rolling stock as well as timely provision of rolling stock (optional)

<u>For customers:</u>

- timely presentation of wagons and cargo to the take-over point (obligatory)
- proper and timely documentation (obligatory)
- earliest notice to railway undertakings of any delays or changes (optional)
- hand-over of cargo in the form and packaging agreed between the parties (optional)

3) Legally binding incentives for ensuring a high level of service quality

The contractual commitments shall be complemented by legally binding incentives to both parties for ensuring a high level of service quality. Such incentives should be defined according to common principles. They should be financial in the form of a compensation scheme or a "bonus/malus" performance scheme with appropriate sharing of risk and reward, avoiding rewards for simply doing what was contracted. The incentives should apply to the whole product rather than to just parts and they should embrace risks that are controllable by the railways and the customers respectively. A "bonus/malus" performance scheme shall be conceptually compatible with the performance regime between railway undertakings and infrastructure managers that is to be set up in compliance with Directive 2001/14 in order to assign risk appropriately in a back to back manner.

4) Voluntary performance regimes between cooperating railway undertakings

The European railway undertakings should commit themselves to put in place a performance regime among themselves in the case of international rail freight services provided in cooperation mode. The system should provide effective incentives for ensuring high quality levels and making all players responsible for those risks under their control. This regime shall be conceptually compatible with the performance regime between railway undertakings and infrastructure managers that is to be set up in compliance with Directive 2001/14 in order to assign risk appropriately in a back to back manner.

5) Improving operational procedures of railway undertakings

The European railway undertakings should undertake voluntary action to improve their operating procedures for national and international services in a joint effort with their customers. These efforts revolve around the following commercial and operational issues:

- Improved planning procedures between railway undertakings and their customers, for instance using common service request templates and joint phased planning procedures;

- Clear and common booking rules and procedures to address timing norms, overbooking and late acceptance issues;

- Joint planning of diversionary routes when main ones are closed for maintenance;

- Appointing a lead railway undertaking as responsible for each service provided in cooperation so as to provide a clear and accountable interface with the customers.

Reinforcing the position of rail freight customers through allowing authorised applicants to apply for train paths

An authorised applicant in rail freight could be, for instance, a shipper or a forwarder with an interest to use the rail mode to transport significant and, over time, fairly stable

cargo volumes. To do this the shipper might choose to contract with a rail freight operator, but if he cannot find an offer on the market place satisfying his needs, he himself might apply for a train path and start to design and organise a service, for which he would subcontract the traction to a railway undertaking.

Authorised applicants imply a customer-oriented shift in influence on the definition of the transport service from the (traditional) railway undertaking towards the freight customer. The possibility for a shipper to present its needs both to the infrastructure manager and to one or more potential railway undertakings is moreover important for innovation and service development. Allowing authorised applicants in the rail freight sector also means that the customers can act in the same way vis-à-vis all transport modes. If they cannot find a suitable offer on the market place it is always possible to design and launch tailor-made logistic solutions, including everything from transport planning to operation and ownership of the vehicles.

The independence of essential infrastructure management functions such as train path allocation from the business of railway undertakings constitutes a prerequisite for the beneficial effects of allowing authorised applicants on the rail freight market. It will be instrumental in creating a climate of cooperation characterised by mutual trust and long-term commitment. The Commission will meanwhile monitor closely the effectiveness of the existing sectoral framework in facilitating fair and non-discriminatory access to infrastructure.

Ensuring efficient functioning of the freight wagons market and of their allocation rules in international use

Since the seventies, a large reduction of the wagon fleet has been observed in the EU. During the nineties, rationalisation of the fleet accelerated and in 1997 it consisted of only some 550 000 units compared to 1.5 million in 1970. Approximately one third of the fleet are privately owned wagons. In Western Europe, most rail freight wagons in 1995 were in the 16-26 year age category, while Eastern European fleets, which were replaced with greater consistency, were 6-16 years old. Private wagon fleets are generally of a lower average age than the state-owned fleets. As the average age of wagon is high their technical characteristics are often out of tune with today's market requirements.

The general characteristics of European freight operations are such that wagon fleet productivity is severely constrained and below that reached by American and Russian operators. For instance, the average for Europe of 350 000 net tonne-km/wagon/year compares with around 4 million net tonne-km/wagon/year in the USA. This reflects, in part, the respective average lengths of run, which are 250 km and 1350 km respectively, but also the technical constraints in Europe (e.g. lacking interoperability, emphasis on mixed passenger and freight operations). One particular productivity issue is the empty running time of wagons. Almost 50% of wagons on the European network run empty generating no sales revenues for the railways. There is considerable potential for improving cost competitiveness as the costs of freight wagons account for about 20% of the total production cost of a rail freight company.

The Commission encourages the industry to set up an efficient system of wagon allocation for international use to diminish empty backhauls. The allocation of wagons for international use between railways could be made more efficient by using IT techniques taking into account empty running charges to get them to the point of use in order to satisfy demand. This scheme could be complemented by a system of auctions of rail wagon capacity for backhauls[31].

1.3.Overcoming entry barriers to the rail freight market

Any freight train operators who would like to provide European services continue to face a number of significant market entry barriers.

i) The access to service facilities is a major issue. In some networks for instance, the traction current provided by the national railway undertaking is much more expensive than on the normal electricity market. Often, the traction current provider does not provide for the distribution of electricity by alternative suppliers. On other networks, access by private railway undertakings to important facilities such as stations, shunting yards and parking tracks is sometimes "reserved" for the national operators through long-term contracts. Sometimes, there is no non-discriminatory access to essential services such as towing services.

   If new rail operators want to establish themselves successfully on the market against dominant national railway undertakings to enhance competition they clearly need some support to face the petty market entry barriers. National regulatory bodies have an important role in monitoring and assessing such structural barriers and in taking appropriate action to overcome them. In cases where the competence of a national regulator would not cover the crux of the problem, for instance in the case of international services, it is important that regulatory bodies cooperate internationally. Additionally, the Commission proposes to reinforce the powers of the national regulatory bodies with respect to ensuring non-discriminatory access to services and services facilities.

ii) One important barrier for starting up private rail services is the lack of a well functioning market for traction. There are only a few, very small second-hand markets or markets for leasing locomotives. Some railway suppliers and rolling stock leasing companies are active on the European market. If they exist, the supply is often not sufficiently well developed to meet the demand. Different certification and admittance procedures in the Member States create significant risks and costs for the rental or leasing company as the rolling stock can, a priori, only be used on the national network. The lease-takers are usually interested in short-term contracts; however, the depreciation period is rarely below 20 years.

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[31] This could either be accomplished by shippers placing bids for empty space on trains as in a traditional auction, with a reserve price (i.e. the marginal cost difference between handling the traffic and hauling empty trains) or, alternatively, the shippers could offer a price that the railway undertakings either accept or reject.

Therefore, as the leasing company has to carry the residual risk the leasing rates are generally so high that they are often not interesting for a new entrant.

To address this problem, the Commission proposes to provide initial start-up support to all logistics operators who transfer transport volumes from road to other modes such as rail. A new intermodal support programme ("Marco Polo") covering the period up to 2010 is going to be proposed soon. In particular, catalyst action (i.e. measures that help overcome structural barriers and foster efficient functioning of transport markets such as the rail freight market) will be eligible for financial and administrative support by the Commission.

iii) Locomotive drivers cannot yet cross borders routinely. Different national regulations governing their training curricula and examination conditions constitute a major barrier for those intending to set up competitive, international services as they need drivers who have a licence for all networks crossed. Harmonisation of drivers' training conditions would eliminate one important market barrier and foster the creation of an internal market in rail services.

The proposal for a rail safety directive together with swift implementation of the interoperability directive for conventional rail systems will lead to approximation of training curricula and examination conditions for locomotive drivers. Additionally, the Commission encourages the industry to set up an open European locomotive driver training centre. Such an initiative can be promoted through support from the EU social funds and through the 6th Community Framework Programme for RTD defining innovative methods for European driver training.

iv) Railway undertakings providing open access services abroad and private wagon owners currently face the hurdle of having to return their rolling stock to their home stations in case of a defect or a periodic overhaul. Current rules do not permit repair or maintenance on site. By contrast, road vehicles can be serviced and repaired anywhere in Europe. Such requirements raise the cost of rail operations and contribute to diminishing the competitiveness of rail services compared to road haulage. In order to tackle this problem the proposed European Rail Agency will help to promote mutual recognition of maintenance workshop qualifications and a system of workshop certification.

v) The requirement for small railway undertakings entering the market to install an automatic train protection (ATP) system is a great (and often insurmountable) barrier and thus puts the new entrant at a competitive disadvantage against national operators. Problems have arisen, for instance, in Dutch-German rail traffic, in German-Danish traffic and with traffic on the Öresund bridge. One common complaint is that ATP systems take an excessive time to obtain and fit. Prices of such national systems, which are often produced by monopoly suppliers, are generally high and vary enormously from country to country. One of the reasons for the monopolistic supply situation is the absence of second-hand markets for rolling stock and ATP systems. Swift implementation of ERTMS and

the appearance of second-hand locomotives equipped with ERTMS are likely gradually to solve the problem.

vi) Private railway undertakings are currently discriminated against compared to State-owned railway undertakings as they have no access to the European Company for the Financing of Railway Rolling Stock (EUROFIMA). The current State guarantee for the national railway undertakings gives them a competitive advantage over private railway undertakings.

Maintaining simple customs transit procedures while fulfilling legitimate supervising functions for the customs authorities

National railway undertakings have long been taking advantage of a specific simplified customs transit procedure. This procedure provides, among other facilities, for waiving the guarantee and transit-related border formalities. The simplified transit procedure for railways was set up at a time when the railway undertakings were public enterprises. In this framework a number of (public) customs functions were delegated to the railway undertakings. This enabled them to simplify customs procedures to the mutual benefit of all concerned, rail undertakings, exporters and customs authorities (e.g. reduced cost through less staff for customs handling, higher commercial speeds of international services as border stops could be avoided, etc.).

The main conditions which must be met for access to this simplified procedure are:

- keeping records for inspection by customs in a central accounting centre to be set up by the railway undertaking in each country;

- use of the rail transport document as the customs declaration;

- goods to be carried in each country by a separate railway company which acts in cooperation with all the other companies involved in the transport operation; breakdown of transport costs for each of the countries whose territory is entered during a given transport operation;

- for all transit operations the railway company must accept the legal customs responsibilities which implies, in particular, completion of the formalities.

Since the emergence of international services provided by one sole rail operator under open access conditions, it has become apparent that these railway undertakings cannot meet the conditions for access to the simplified procedure. Some of the conditions such as the obligation to cooperate in providing an international service or to provide a breakdown of transport costs for each of the countries entered clearly run counter to Community internal market objectives in the transport sector and competition rules.

Railway undertakings that want to take advantage of the recent EU rail market opening have to use at present the standard customs transit procedure, which is open to all modes of transport. As it does not take account of the special nature of transit operations by rail, this standard procedure is more costly and involves (in principle) more formalities, even

though the standard procedure also provides for certain simplifications (authorised consignor, authorised consignee, comprehensive guarantee or guarantee waiver), subject to fulfilling the necessary legal conditions.

The question of simplification of the customs procedure applying to rail transport and of the conditions of access to the simplified procedures is of vital interest to all rail freight service operators subject to a customs transit procedure in the EU. The number of international (transit) services has increased significantly in the past and is most likely to continue to do so in the light of further rail freight liberalisation. The question is most pressing for services between two points in the Community through Switzerland. The cost of the standard transit procedures can constitute a significant cost factor which may create further burdens for new rail freight services.

For some time it has been felt that an overall reform of the simplified procedure is necessary taking into account the following:

- the present provisions do not reflect the liberalisation of the rail freight sector;

- the conditions for access to the simplified procedure have not all been published in a transparent way and should therefore be integrated into the relevant legislation.

In this context, the Commission will formulate staged solutions for modernising the rail customs transit procedure granting the liberalised rail freight sector as many simplifications of the customs transit procedure as can be reconciled with the legitimate requirements of customs authorities to control international transport.

First, as an intermediate measure the Commission will make a proposal for defining the conditions under which railway undertakings can take advantage of the simplified Community transit procedure in order to increase the transparency of the existing procedural framework. Second, in the short to medium term the introduction of NCTS, the electronic data exchange system between customs authorities and transport operators will bring about a modern electronic procedural environment for all operators, to the benefit also of the railway undertakings. The Commission considers that in about two years NCTS will be implemented on a large scale so that all railway undertakings, including those that want to operate under liberalised market conditions, can enjoy meaningful customs simplifications on a non-discriminatory basis. In order to attain an equivalent level of simplification, as in the case of the simplified transit procedure for rail, in 2002 the Commission will propose an amendment of the Customs Code that would allow for a general guarantee system for transit by rail (including for independent railway undertakings). These provisions will ensure a simple, transparent and non-discriminatory procedural framework that will create no unnecessary barriers for railway undertakings in international transport and that takes into account the control requirements of customs authorities according to EU rules. The Commission will endeavour to make the specifications for NCTS compatible with the future TSI "telematics applications for freight" to ensure interoperability in international rail freight operations.

1.4. Providing high-quality infrastructure for a more efficient rail freight sector in Europe

Developing an efficient European network with rail freight priority enabling a high level of service quality

Major stumbling blocks to the development of European rail freight are inefficient use and technical and physical insufficiencies of the rail infrastructure. Incompatibility of slow and fast trains as well as technical and operational differences between national networks in combination with a low priority for freight trains in train path allocation and daily train path management limit the growth potential of rail freight services. Infrastructure saturation, for instance at national borders, in the vicinity of major urban and industrial conglomerations and on major freight corridors, worsens the situation.

A first step towards a more efficient European rail freight network will be to render it gradually interoperable. With each new investment or upgrading project on the trans-European rail network the technical specifications for interoperability (TSI) provided for by Directives 96/48 (high-speed rail systems) and 2001/16 (conventional rail systems) should be applied. In many cases Member States receive Community financial support for such projects out of the TEN budget or other financial instruments. Past experience has shown, however, that in some cases Member States do not apply the TSI when they commission new or upgraded rail infrastructure, energy systems or command and control systems.

In order to promote swift penetration of interoperability specifications, the Commission therefore has to ensure a link with Community financial support to trans-European rail infrastructure projects, i.e. introduce an interoperability condition for Community transport funding. This link has to be more clearly affirmed in all the financial instruments of the Community.

Secondly, infrastructure managers should cooperate internationally in order to work together for better utilisation of existing infrastructure. This could be achieved, for instance, through better harmonisation of (slow and fast) traffic flows when allocating international and national train paths while attributing due importance to international freight.

Thirdly, if rail freight is to play a more prominent role in the future to render the European transport system more efficient and to contribute to sustainable mobility, operation of the rail freight network must be redesigned to allow attractive and high-quality services at European level.

Working towards a pan-European rail information exchange system

Data exchange and information systems are the Achilles heel of international freight services. The data exchange needs of modern railways are significant. They include information related to the operation/production of the service (e.g. train planning, fleet management, timetabling), location/status reporting and commercial applications (e.g. consignment notes, bookings by the customer, invoicing, etc.).

National information systems cover these functions more or less. Problems arise when it comes to international traffic. The protocols defining the data format and the network interfaces generally do not match. International systems based on UIC leaflets and the existing cross-border transmission networks such as Hermes Plus and HOSA could theoretically provide a framework for achieving data interoperability for cross-border rail freight services. However, most national railway operators have not adhered to these systems, often considered too costly, and have preferred to set up bilateral arrangements. In addition, private operators and third-party service providers have no access to these networks and have now built their own systems (e.g. the combined transport operators work with the CESAR system). The emergence of new market entrants is unlikely to increase the acceptance of UIC-based systems.

However, the need for interoperable, open exchange systems for operational data and customer information is vital for the competitiveness of European rail freight. Among other things they would allow:

- A rapid European rate/tariff quotation system;

- Improved IT links between railway undertakings to facilitate transfer of wagons or trains between cooperating operators, including paperless transfer of consignment information and better consignment status information;

- An integrated European daily train planning and timetabling system to operate freight services flexibly on a wide scale.

Outside Europe, the US data exchange system sets standards providing real-time information from a central database via electronic data exchange and the Internet. RAILINC, a stand-alone organisation (a former wholly owned subsidiary of the Association of American Railroads) manages this process to the satisfaction of the stakeholders (railway undertakings, customers, customs, regulators and fleet owners/managers). Railway undertakings pay a charge to RAILINC for the data transfer services, whereas the information is generally provided free of charge to rail customers. The American example shows that data exchange can be a viable business if the players on the market take a common commercial approach.

Although Europeans can learn a lot from the US experience, the European approach must be based on the existing infrastructure and the specific framework conditions in Europe (e.g. division into national networks, separation of essential functions from train operation, etc.). Ideally, the future system should build on the existing national systems to optimise investment, defining the interface specifications and providing a European superstructure for storing, processing and exchanging the data.

In September 2001 the Commission mandated AEIF swiftly to develop the technical specifications for a European rail data exchange system in the framework of the TSI for freight telematics subsystem of Directive 2001/16/EC (interoperability of trans-European conventional rail systems). This TSI describing mandatory procedures, message format, data type and data capturing means of the system should draw as much as possible on

existing standards and best practice. The TSI for freight telematics could be adopted by 2004.

The Commission encourages the enterprise sector (e.g. logistics integrators, forwarders, railway undertakings, etc.) to take the initiative to set up a commercially managed data exchange platform once the TSI for freight telematics becomes available. A high-level consensus-finding conference would be instrumental in this respect. Although currently industry seems to be reluctant to launch itself into this venture, the Commission expects that the opening of the rail freight market proposed in this railway package will trigger a process of converging the business strategies of European railway undertakings towards real cooperation. Then there will be sufficient economic incentives to set up a commercial European data exchange platform either by railway stakeholders or by other parties such as logistics integrators.

For implementation of such a concept fostering intermodal transfer, the industry could request Community support under the Marco Polo programme.

1.5.Improving the environmental performance of rail freight services

Rail is a relatively environmentally friendly mode of transport. Studies on the external costs of transport modes[32] underline this statement. One major advantage of rail with respect to energy consumption is its low rolling resistance compared to road transport. This translates into a relatively favourable energy efficiency record. Thus, for instance, in 1999, the energy intensity of rail freight in the EU was on average ca. 0.03 koe per tonne-km compared with 0.05 – 0.11 koe per tonne-km for trucks[33].

However, the railways have done little in recent times to sustain this position in the future. The performance of rail freight in terms of noise emissions, energy efficiency and diesel emissions is hardly improving, also due to the long investment cycles for rolling stock (25 to 40 years). This is worrying especially knowing the load factor of rail freight wagons is low (ca. 50% of wagons run empty). Other modes such as road haulage are making significant progress in their environmental performance. Trucks are becoming quieter, more energy efficient and cleaner thanks to stricter emission standards. Hence, there is a serious risk that the railways could lose the environmental bonus that constitutes one of their advantages.

1.5.1. Railway noise

The most significant source of noise from rail rolling stock is the rolling noise, i.e. the noise created by the wheel-rail interaction. This concerns, of course, both passenger and freight services, but the problem is much more acute in the case of freight. The iron brake

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32 For instance, INFRAS/IWW (2000), External costs of transport (accident, environmental and congestion costs) in western Europe, March or TRL Ltd (2001), A study on the cost of transport in the EU in order to estimate and assess the marginal costs of the use of transport, commissioned by the European Commission, Directorate-General for Energy and Transport.

33 TERM 2001 indicators on transport and environment.

blocks of freight wagons scratch the surface of the wheels, which aggravates the rolling noise. The continuous use of these iron brake blocks could lead to operating restrictions (e.g. during the night) imposed by national authorities to protect the population against sleep disturbances and other health impacts of noise. Therefore, there is a serious risk that international rail freight traffic could be hampered by national measures and that the railways could lose further competitiveness against road haulage.

Today modern brake blocks based on composite materials (e.g. K-block and LL-block) can reduce the noise emissions by 8dBA to 10dBA. Railway undertakings consider the equipment of new freight wagons with K blocks and the retrofitting of existing wagons with LL blocks as cost-effective. New freight wagons equipped with K-blocks are currently being purchased by some national railway companies. However, the technical development of LL blocks seems to be encountering problems. Retrofitting with K blocks is deemed too expensive by the industry. Beside this technical problem a major challenge to the environmental record of rail is the critical noise performance of wagons from accession countries that circulate freely on the Community networks. Any meaningful rolling stock noise abatement strategy has to include those wagons. The UIC has estimated that out of the existing ca. 1 million freight wagons in Europe 700 000 would need retrofitting.

The Commission undertook a study to investigate cost-effective railway noise abatement measures[34]. The project recommends a set of actions such as defining limit values for new rolling stock, a voluntary agreement on retrofitting brakeblocks for the existing wagon fleet and the introduction of an emission-based track access charge to provide incentives for investment.

In September 2001 the Commission mandated the AEIF to develop TSI that define cost-effective but ambitious noise emission limit values for new rolling stock and appropriate maintenance rules to tackle the noise problem in the framework of the implementation of Directive 2001/16/EC (interoperability of trans-European conventional rail systems). The working group on railway noise set up in the framework of the Commission's new approach to noise policy will assist the AEIF in this endeavour.

Acting on the existing fleet the Commission will enter into a dialogue with industrial players to assess cost-effective options, including voluntary measures by industry for noise abatement in the existing rail wagon fleet and specific measures for the rolling stock in accession countries.

1.5.2. Atmospheric emissions from diesel train engines

At local or regional level emissions from diesel train engines can constitute a significant nuisance as diesel locomotives ensure ca. 13% of all rail traction in Europe. Modern diesel engine technology for trucks and non-road mobile machinery brought about a

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[34] Ødegaard&Danneskiold-Samsø A/S (2001), A study of European priorities and strategies for railway noise abatement, Study for the European Commission, Directorate-General for Energy and Transport.

significant improvement in particulate emissions, CO, HC and NOx emissions. The technology is available for both modes. The basic problem of the poor performance of rail in this respect is the long service life of diesel locomotives (30 to 40 years) compared with trucks (10 to 15 years) which slows down the spread of new technologies in the fleet. Therefore, the Commission's approach must be twofold, addressing new rolling stock as well as the existing stock.

On new locomotives:

The Commission proposes to revise Directive 97/68 on measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery in order to include (light-duty) diesel train engines and to set cost-effective but ambitious emission limit values.

In 2002 the Commission intends to mandate AEIF to develop technical specifications for interoperability for the rolling stock subsystem defining cost-effective limit values for heavy-duty diesel engines.

On existing locomotives:

The Commission will enter into a dialogue with industrial players to assess cost-effective options including voluntary measures by industry to improve the emission performance of existing diesel locomotives, for instance through retrofitting or ex-post engine optimisation.

2. ANNEX 2: SITUATION WITH INTERNATIONAL RAIL PASSENGER SERVICES

This annex is based on a study of the market for international rail passenger transport, which assessed[35] the supply and demand in the market. The different markets for rail passengers will be described with respect to their current developments and potential.

2.1.The existing Community legal framework

An international rail passenger service is defined as a service which crosses at least one internal EU border.

The limitations and opportunities of international groupings

It seems that the access rights according to Directive 91/440 have hardly been used.[36] In practice, international rail passenger services within the EU are carried out by railway undertakings cooperating on the basis of their existing domestic market access rights. The limitations of the "international grouping" as a means of fostering the freedom to provide rail transport services was acknowledged in the Commission's 1996 White Paper *A Strategy for Revitalising the Community's Railways*: "the effectiveness of the access rights created by Directive 91/440 has been limited by …the condition of belonging to an international group." It seems clear, for the short term at least, that most intending new entrants to the international passenger market will be dependent upon an incumbent in order to access the network. This is hardly satisfactory.

However, in that connection, it should be borne in mind that the concept of "international grouping" is not confined, as some parties have maintained, to the type of joint arrangement typically engaged in by the incumbent operators. On the contrary, it is settled case law that "international grouping" is capable of very wide interpretation indeed. In *European Night Services Ltd*[37], the Court found (paragraph 182 of the decision) that the definition of international grouping in Article 3 of Directive 91/440:

> *"…does not lay down any specific mandatory form…The essential feature which is clear from that definition is merely that it must be a form of association under which the provision of international transport services is possible. The Court therefore considers that, failing a precise definition…use of the term…cannot be confined to "cooperative associations" among railway companies ("traditional joint operation agreements"), to the exclusion of any other form such as a cooperative, or even concentrative, joint venture."*

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35 OGM study, 2001

36 COM(1998) 202 on the implementation of Directive 91/440.

37 Joined cases T-374/94, T-375/94, T-384/94 and T-388/94.

It should also be underlined that the fact of belonging to an "international grouping" does not confer any anti-trust immunity whatsoever.

Public service obligations and exclusive rights

Exclusive rights can protect an operator from competition from one type of competitor, while permitting competition from others.

Today, any exclusive rights for the provision of rail passenger services must take a form that permits international groupings to seek to enter the market and must be treated on a non-discriminatory basis. 'Grandfather rights' used in the capacity allocation process do not exist. Infrastructure managers may conclude framework agreements with railway undertakings to give some multi-annual guarantees on capacity. However, these framework agreements cannot have an exclusive nature and therefore imply that a new grouping may always have a possibility to enter the market and reserve capacity, even if current capacity seems to be fully used.

On international rail passenger services, cabotage is allowed only for railway undertakings having domestic market access.

According to Regulation 1191/69[38] – as amended by Regulation 1893/91[39] - public service contracts must be concluded for international rail passenger services if financial compensation for public service obligations is paid. The Commission has submitted a proposal[40] to replace this Regulation, according to which these public service contracts can only be awarded – with limited exceptions - following tendering.

People need rail services that cross administrative boundaries. To achieve this, neighbouring authorities need to cooperate. Within a Member State, if competent authorities fail to cooperate, national authorities can take remedial action to protect the interests of passengers. The same does not apply for regional services that cross international borders. Therefore, the draft Regulation on public services in public transport has a specific provision to make it easier to develop cross-border regional services.

Exclusive rights for passenger rail services can be granted in ways that still allow a limited amount of competition from open access services. This is already the case with respect to "91/440" services (no exclusive right can protect an operator from competition from such services).

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38 Regulation 1191/69 of 26 June 1969, OJ L 156, 28 June 1969, p. 1.

39 Regulation 1893/91 of 20 June 1991, OJ L 169, 29 June 1991, p. 1.

40 COM(2000)0007 Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway (presented by the Commission), OJ C 365E, 19 December 2000, p. 169.

2.2.Current market situation for international rail passenger services

It is estimated that approximately 5% of the turnover of the railway undertakings is generated by international rail passenger services, which account for approximately € 1.3 billion[41].

The rail market must function and develop in an environment which is not always favourable to this mode of transport. Though rail transport continues to receive a considerable amount of State aid for domestic services (see table at the end of this section), it is at a competitive disadvantage compared to other modes due to external reasons, such as unequal infrastructure charging levels between rail, air and road transport and the fact that important external costs of road are not allocated to the users. VAT is not levied for international air services, whereas VAT for rail services varies between 0 and 16%, as the latter are not harmonised. There are no kerosene fuel taxes for air services. It should also be remembered that the liberalisation of aviation has led to low-cost carriers on routes traditionally served by rail.

Moreover, public authorities have difficulties in cooperating on the international services to conclude international public service contracts for cross-border rail services. A sign of this is the small number of public service contracts concluded for these services. The same problems occur within Member States where regional public authorities have to cooperate on concluding such public service contracts.

For international rail passenger services, **5 major market segments** can be identified, though it was not possible to determine precise market shares:

(1) Regional cross-border services

Regional cross-border services usually serve commuters working in one Member State but living in another. Roughly, these services consist of international trips not exceeding 80 kilometres, and they often have a domestic function as well. Examples can notably be found in Luxembourg (commuters from France, Belgium and Germany) or in the south-eastern part of the Netherlands (commuters to and from Germany and Belgium).

For these services, there is obviously a potential market as the number of cross-border workers has increased considerably. It is now estimated that approximately 2.5 million Europeans commute to another Member State. However, in the (recent) past, many lines allowing these services have been closed down, and it seems that the lack of cooperation between public authorities on both sides of the border is part of the explanation. Replies to a questionnaire on public services in rail transport sent by the Commission to the Member States reveal that only in very few cases was a public service contract concluded for cross-border services as these services are usually not profitable. In one case[42] public

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41 According to data provided over 1999 by the UIC, the turnover of incumbent railway undertakings for rail passengers totals € 24.878 million, with no data available from DK, IRL and L.

42 Groningen – Leer service between The Netherlands and Germany.

authorities tried to tender such a service but failed to let the service start because of a lack of consensus between the two public authorities on financing the service.

(2) International long-distance services

Long-distance services are probably the best known international rail passenger services. Examples are Paris–Madrid or Amsterdam–Milan. For distances from 300 kilometres, train services can compete on price and speed with air and road travel, which represents an enormous potential that can be exploited, if the negative effects of borders can be overcome. These services have an important domestic component as well.

(3) International high-speed services

These services are relatively new and often use new dedicated high-speed lines, such as the Paris–Brussels, Paris-London and Brussels–London services. These services are currently operated by Thalys and Eurostar, joint ventures of railway undertakings sharing mainly marketing facilities (international groupings as defined by Directive 91/440). Trains and rolling stock are still owned and controlled by the participating railway undertakings SNCF, SNCB and Eurostar UK. Thalys has managed to win a 53% modal share between Brussels and Paris and is currently offering Air France customers the possibility to start their flight from Paris-CdG at Brussels Midi station by means of code-sharing. The business market is important for the profitability of this segment and yield management on fares is widely applied.

(4) Niche services, night trains, car trains

These are regular services that serve a very special part of the market. Night trains can be good value for passengers wanting to arrive in the morning in city centres. Car trains are of great value for longer distances, e.g. to tourists as well as people with reduced mobility who need their own car. Not all these services run all year round.

Night services have been in a difficult position for years but recent efforts show that if set up and marketed well these services have good growth potential.[43]

(5) Occasional services

Occasional services are services that are not run all year round with the same times and schedules. These services have value for tourists or are used for incentive travellers. Travel agencies have traditionally been involved in such transport by taking the commercial risks for hiring complete trains from railway undertakings and selling the tickets on their own account. This market has become smaller, largely due to competition with, for example, air transport. However there are signals that in specific parts of the market there is still demand for occasional travel.

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[43] The OGM-study showed 10% yearly growth in the DB night services market since DB restructured its services. Recently DB extended its initiative to Austria and Switzerland in combination with ÖBB and SBB.

The table below clearly shows the relative importance of the market segments for each of the targeted groups of travellers.

Market segments international rail passengers/ Train products	Regional cross-border	Intercity, long-distance	High-speed services	Regular niches services: Night trains Car trains	Occasional services
Commuters	***	*	*		
Business travellers		**	***		*
Leisure market		**	**	***	***

***: very important; ** important; * less important

2.3.Improving the quality of international passenger services

Both the study as well as the hearing on passenger rights organised by the Commission showed significant underperformance in certain segments of the international rail passenger market.

However, there is considerable evidence that international rail passenger services could be largely improved. The market for international passenger travel and services in general can grow considerably because of the increase on the demand side: enlargement of the EU; the increasing number of cross-border and other migrant workers; growing tourism and the growing number of retired people with sufficient resources and time, who prefer safe and comfortable travel. The supply side of transport services has been improved by the introduction of high-speed services as shown by the market success of new international high-speed services such as Thalys and Eurostar, or the new occasional services for incentive travel offered by GVG. The recent successes of new night trains undertaken by DB/ÖBB/SBB and the success of cross-border public service contracts where they are applied, e.g. between Copenhagen and Malmö, also indicate that the market structure itself allows an increase in passenger services.

A number of issues seem particularly important to make this mode more attractive:

(a) Travel information and booking (timetables, preboarding, real-time travel information)

During the hearing on rail passenger rights, the lack of good information was the most frequently quoted problem. Both passengers and travel agents have many difficulties in finding information on timetables, scheduled services, fares and fare structure, real-time travel information and service facilities offered, for example for bikes or for people with reduced mobility (PRM). However, some

railway undertakings have successfully developed online ticketing systems, through a multilingual website, and offer free home delivery services.

(b) Punctuality of services and compensation in case of delay

Punctuality of services is regarded as low, and for international services there are indications that it is even lower than for domestic services. On the other hand it must be added that recently the competing air mode has also been facing considerable delays.

Railway undertakings do sometimes compensate their passengers for late trains, but this varies widely and the railway undertaking sometimes put a lot of constraints on this (e.g. when the delay is beyond its control).

(c) Complaint handling

During the hearing, examples of studies were given presenting considerable lack of good responses to complaints. For rail travel especially, where passengers usually have no alternative, this can be regarded as monopolistic misbehaviour.

(d) Accessibility for persons with reduced mobility (PRM)

Accessibility levels on stations and trains are still insufficient. Sometimes trains are equipped to allow easy access for PRMs, but stations have no escalators to move PRMs from one platform to another.

(e) Accessibility for bikes

A study by the European Cyclists Federation[44] showed that the possibilities to transport bikes vary widely within the EU but are, in general, rather limited.

The Commission will table a proposal on rail passenger rights laying down the basic consumer protection rules for international rail passenger services. The range of topics that will be addressed in this Regulation has been described under section 2.2.2 of this communication.

Besides, the railway industry will be encouraged to improve service quality standards and to develop quality commitments by developing a voluntary charter on service quality (see section 2.2.2). The interoperability of the services with domestic services and with other modes should be improved as well. The effectiveness of this quality commitment should be one input to the evaluation of the implementation of market opening to assess the necessity and feasibility of further opening of the market concerning cabotage services.

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[44] Bicycle Transport on International Trains, report on the arrangements for the carriage of bicycles on international long-distance trains, 40 p. + annexes, ECF - UCI, published by ECF, December 1999.

Basic data on State aid (1999), turnover and passenger km per Member State[45]

Member State	State aids under Regulation 1191 in million €	Total State aids, in million €	Passenger km (billion)	Turnover by railway undertakings on passengers in million €
Belgium	336	2119	7.6	483
Denmark	476	757	5.4	
Germany	4504	9982	72.8	9187
Greece	0	530	1.6	42
Spain	234	1395	19.2	812
France	1550	6127	66.5	4761
Ireland	102	180	1.4	
Italy	1567	5389	41	1879
Luxembourg	70	182	0.3	
Netherlands	234	1806	14.3	1210
Austria	641	656	8.1	503
Portugal	50	100	4.3	115
Finland	38	39	3.4	62
Sweden	64	824	7.4	642
UK	2399	2506	38.8	5182
UK Northern Ireland	16	16		
TOTALS	13472,00 €	32608	292.1	24 878

[45] Source:Annual questionnaire on State aids (columns 1 and 2), UIC (columns 3 and 4).
Column 1: State aid given according to Regulation 1191/69 – data from EC provided by Member States.
Colum 2: State aid for rail passenger, rail infrastructure, rail freight - data from EC provided by Member States.
Column 3: number of passenger-kilometres per network – data from UIC.
Column 4: amount of incumbent railway undertakings turnover on passenger services – data from UIC.

ABBREVIATIONS

AEIF: European Association for Railway Interoperability

ATP: Automatic Train Protection

COTIF: Convention concerning International Carriage by Rail of 9 May 1980

ERTMS: European Rail Traffic Management System

ETCS: European Train Control System

OTIF: Intergovernmental Organisation for International Carriage by Rail (*see COTIF*)

RMMS: European Rail Market Monitoring System

RIV: Regolamento Internazionale Veicoli

TSI: Technical specifications for interoperability

UIC: International Union of Railways

UIRR: International Union of combined Rail-Road Transport Companies