

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways

(COM(2004) 139 final — 2004/0047 (COD))

(2005/C 221/13)

On 28 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 January 2005. The rapporteur was **Mr Chagas**.

At its 414th plenary session (meeting of 9 February 2005), the European Economic and Social Committee adopted the following opinion by 122 votes to 53 with 12 abstentions.

1. Introduction

1.1 The present proposal forms part of the **third railway package**, which was adopted by the European Commission on 3 March 2004. The other components are:

— Proposal for a Directive on the certification of train crews (COM(2004) 142 final);

— Proposal for a Regulation of the European Parliament and of the Council on international rail-passengers' rights and obligations (COM(2004) 143 final);

— Proposal for a Regulation on compensation and quality requirements for rail freight services (COM(2004) 144 final);

and

— Commission Communication on further integration of the European rail system (COM(2004) 140 final);

— Commission staff working paper on gradually opening up the market for international passenger services by rail (SEC(2004) 236).

1.2 The **first railway package** (also called the infrastructure package) came into force on 15 March 2001 and had to be transposed into national legislation by 15 March 2003. It comprises the following components:

— Amendment of Directive 91/440/EEC, including free market access for international rail freight on the trans-European rail freight network by 15 March 2003 and liberalisation of all international rail freight by 15 March 2008 ⁽¹⁾;

— Extension of the scope of the Directive on a European licence for railway undertakings (amendment of Directive 95/18/EC) ⁽²⁾;

— Harmonisation of the provisions governing the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (replaces Directive 95/19/EC) ⁽³⁾.

1.3 In October 2003 the European Commission took nine Member States to the European Court of Justice for failing to notify the transposition of the first railway package into national law. By May 2004 five countries' notification had still not been received and two Member States had transposed only some of the provisions into national law.

⁽¹⁾ Directive 2001/12/EC – OJ L 75, 15.3.2001, p. 1 – EESC opinion – OJ C 209, 22.7.1999, p. 22

⁽²⁾ Directive 2001/13/EC – OJ L 75, 15.3.2001, p. 26 – EESC opinion – OJ C 209, 22.7.1999, p. 22

⁽³⁾ Directive 2001/14/EC – OJ L 75, 15.3.2001, p. 29 – EESC opinion – OJ C 209, 22.7.1999, p. 22

1.4 The **second railway package** was published in the Official Journal of the European Community on 30 April 2004 and has to be transposed into national law by 30 April 2006. It comprises the following components:

- Amendment of Directive 91/440/EC: bringing forward free market access for international rail freight to 1 January 2006 and liberalisation of national rail freight, including cabotage, from 1 January 2007 ⁽⁴⁾;
- Directive on railway safety in the Community ⁽⁵⁾;
- Regulation establishing a European Railway Agency ⁽⁶⁾;
- Amendment of the Directives on the interoperability of the high-speed rail system (96/48/EC) and the conventional rail system (2001/16/EC) ⁽⁷⁾.

1.5 The first and second railway packages provided the legal basis for establishing a single rail freight market. The measures encompass market access, the licensing and safety certification of railway undertakings, access to infrastructure and the calculation of charges for its use, the creation of a legal framework for rail safety, and measures for ensuring the technical interoperability of the rail system.

1.6 As the EESC has already pointed out in its Opinion on the second railway package ⁽⁸⁾, this new legal framework makes it necessary to completely reorganise the sector and establish new authorities and competences.

1.7 In the same opinion the EESC also pointed to the need for European social rules. European social partners in the railway sector, the Community of European Railways and the European Transport Workers' Federation signed two European agreements on 17 January 2004 concerning:

- 1) The introduction of a European train driver's licence for train drivers on international services.
- 2) Agreements on certain aspects of the conditions of employment for train crews on international services.

⁽⁴⁾ Directive 2004/51/EC – OJ L 164, 30.4.2004, p. 164 – EESC opinion – OJ C 61, 14.3.2003, p. 131

⁽⁵⁾ Directive 2004/49/EC – OJ L 164, 30.4.2004, p. 44 – EESC opinion – OJ C 61, 14.3.2003, p. 131

⁽⁶⁾ Regulation (EC) No. 881/2004 – OJ L 164, 30.4.2004, p. 1 – EESC opinion – OJ C 61, 14.3.2003, p. 131

⁽⁷⁾ Directive 2004/50/EC – OJ L 164, 30.4.2004, p. 114 – EESC opinion – OJ C 61, 14.3.2003, p. 131

⁽⁸⁾ OJ C 61, 14.3.2003, p. 131

1.8 As part of the third railway package, the Commission is proposing a directive on the certification of train crews, which would come into force in 2010 or 2015.

1.9 In submitting a further amendment to Directive 91/440/ECC, the Commission continues to pursue its aim of a gradual deregulation of the railway sector.

2. The European Commission Proposal

2.1 The Commission proposes to deregulate market access for international passenger services from 1 January 2010 onwards. The proposal also covers cabotage, that is to say the picking up and setting down of passengers at railway stations along the entire route. At the same time the provision on free access to the market for international groupings is to be abolished.

2.2 Each year 6 billion passengers travel by train in the EU 25, with local and regional services taking the lion's share. International passenger services account for only about 10 % of rail travel, based on tickets sold. This includes regional cross-border services, long-distance cross-border services and high-speed (cross-border) services.

2.3 The Commission recognises that opening up international passenger services, including cabotage, to competition could perhaps have a negative impact on the economic balance of public service passenger transport. It proposes to grant exemptions from free market access on routes where public service contracts are already in force under Directive (EEC) No. 1191/69, and where a deregulation of international services could upset the balance. This exemption will only be granted in cases where this is absolutely critical to maintaining the provision of public service transport, and where it has been sanctioned by the regulatory authority under Article 30 of Directive 2001/14/EC. Judicial review of the decision to grant exemption must also be possible.

2.4 The Commission is required to present a report on the implementation of the provision by 31 December 2012.

3. Evaluation of the Proposal

3.1 Prerequisites for revitalising the railway industry

3.1.1 The proposal to deregulate international passenger services is based on the assumption that competition in international services will lead to one or more of the following consequences: higher passenger numbers, a transfer from other transport modes (in particular air transport) to rail, improved quality for customers and lower fares.

3.1.2 In its Opinion on the 2nd railway package ⁽⁹⁾ the EESC already pointed out the basic prerequisites for revitalising the railway system:

- funding the extension and consolidation of the railway infrastructure;
- introducing technical interoperability and providing the funds this requires;
- creating an environment for fair competition between modes of transport, and in particular:
 - ensuring that social legislation in the road transport sector is adhered to;
 - providing a fair infrastructure charging policy for all modes of transport.

3.1.3 To date the proposal for a fair infrastructure charging policy for all modes of transport, as announced in the White Paper on European Transport Policy for 2010, has not materialised.

3.1.4 The monitoring and proper application of social legislation in road transport still remains a serious problem.

3.1.5 Furthermore, a solution to the debt problems of many rail companies needs to be found. Especially in the new Member States, railway companies will be unable to compete without finding a solution for their high debts.

3.1.6 The EESC also pointed out that the introduction of new authorities, as required by the first and second railway packages (regulatory body, charging body, allocation body, notified body, safety authority, accident investigation body) would entail a realignment of the railway industry's organisational structures at short notice, and would require a number of years of practical experience before it could operate smoothly. The EESC has declared itself in favour of making rail

safety a priority. This would include introducing European social legislation on the railway industry.

3.2 Ex-post analysis of the deregulation of rail freight services

3.2.1 The decisions concerning the deregulation of rail freight services have already been made; however the effects these decisions will have are as yet unknown.

3.2.2 The European Commission is required to submit a report by 1 January 2006, which covers the following areas ⁽¹⁰⁾:

- implementation of Directive 91/440/EC in the Member States and examination of the way in which the various bodies involved actually operate;
- market developments, in particular international trends in transport, operations and market shares of all market players (including new operators);
- effect on the entire transport industry, and in particular any shift to alternative transport carriers;
- effects on safety levels in individual Member States;
- the working conditions in the industry in individual Member States.

3.2.3 The EESC believes it is appropriate to wait for the report to be published and an understanding of the effects measures implemented so far has been gained, before any further steps towards opening the market are taken and asks the Commission to deliver the report in time.

3.3 Ex-ante analysis of the deregulation of international rail-passenger services

3.3.1 Prior to announcing the 3rd railway package the Commission ordered a study on the deregulation of passenger services. The declared purpose of the study was to examine various options for deregulation and to recommend one of them. These options were:

- deregulation of international services without cabotage;
- deregulation of international services with cabotage;
- deregulation of both national and international rail-passenger services.

⁽⁹⁾ See footnote 8.

⁽¹⁰⁾ Article 2(d) of Directive 2004/51/EC of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways.

3.3.2 The study recommended deregulation of international passenger services with cabotage ⁽¹¹⁾.

3.3.3 The EESC regrets that a study of this kind was not used to examine important issues comprehensively. These issues relate to the effect of deregulation of passenger services:

- regional rail services as services of general interest, especially in small and medium-sized Member States;
- quality of service for customers;
- employment and working conditions in rail-passenger transport;
- rail operators in the new Central and Eastern European Member States.

3.3.4 The study includes observations on individual areas that it touched upon (such as the importance of fares and route prices). These observations were made on the basis of four case studies (Sweden, Germany, Spain, Hungary) and a simulation exercise for two routes. It also advises against deregulation of national rail-passenger services. However, the stated aim of the study was to recommend one of the three options.

3.4 *Effects of deregulation on regional and public services*

3.4.1 Through cabotage, the proposal for deregulation of international passenger services requires that markets in certain national passenger services are to some extent opened up.

3.4.2 National passenger transport is often a network transport where profits made on routes with large passenger volumes compensate for losses on lower-volume routes, thus making it possible to provide a fuller service. This is not only true of public service routes, with exclusive rights and/or subsidies, for which the Commission proposal allows exceptions, under strict conditions.

3.4.3 In small and medium-sized Member States in particular, this could lead to serious disruption to rail-passenger services, which are not contractually covered by exclusive rights.

3.4.4 In some Member States contracts on public services obligations cover not just individual routes, but the whole

network. In such circumstances it will be difficult to furnish evidence of a threat to the balance of public service transport.

3.4.5 The possibility of exemptions, as proposed by the Commission, will involve complicated procedures in proving the validity of exemptions and could well lead to legal disputes.

3.4.6 In July 2000, the European Commission proposed COM(2000) 7 final, to replace Regulation (EEC) No. 1191/69 on the obligations inherent in the concept of a public service in transport, which provides the rules for exclusive rights and compensation for public passenger transport, by a new Regulation.

3.4.7 The proposal to amend Regulation (EEC) No. 1191/69 has been blocked in the Transport Council for several years. Fundamental differences between the Commission proposal and the European Parliament's position remain, and these could have considerable implications for the impact of the proposal in terms of deregulation of rail-passenger services. The Commission is planning to submit a new proposal before the end of the year.

3.4.8 This is another argument in favour of waiting until this piece of legislation has been adopted, before making any proposals to protect the balance of public service rail-passenger services in connection with deregulation.

3.5 *Effects on quality of service for customers*

3.5.1 In view of the high costs and traditionally low ticket prices, the study concludes that it is unlikely that deregulation of international passenger services will lead to further price reductions for customers.

3.5.2 Increased choice resulting from competition between rail operators on the same route, could at the same time mean that standards that have prevailed so far — one timetable, one ticket, information from one source — can no longer be guaranteed. Greater barriers to information will be created.

3.5.3 The Commission's response to this is to propose legislation, which obliges competing companies to cooperate in order to maintain the standards of information that have been guaranteed so far.

⁽¹¹⁾ EU Rail Passenger Liberalisation: Extended impact assessment, February 2004 by Steer Davies Gleave, London.

3.5.4 The EESC will examine this proposal in a separate opinion. However, it would like to point out that obliging competing companies to cooperate for the purpose of customer information is only necessary once the passenger service market has been opened.

3.6 Effect on Employment

3.6.1 The Commission assumes that deregulation of international passenger services will lead to reductions in personnel in the short term, but that in the medium term employment will rise as a result of an increase in passenger numbers. It does not, for instance, take into consideration, the possible negative effects on employment resulting from the deregulation's impact on regional and public service routes. In respect of Article 1.7 of this proposed directive the effects would depend on the decision of each Member State to finance regional passenger transport.

3.6.2 The number of employees in the railway industry has halved over the past decade. Rail operators in the new Member States and Western Europe rail have announced further large staff cuts. If deregulation of international passenger services leads to rail operators in small and medium-sized EU States being displaced in national long distance services as well, positive effects on employment are not to be expected.

3.6.3 Passenger rail travel has traditionally been a mode of transport open to all sections of society. Air transport has developed from a luxury to a mode of mass transport. The positive employment effects associated with this development cannot be reproduced to that extent in international rail-passenger transport.

3.6.4 Meanwhile, high quality jobs in the former state owned airlines have been replaced by lower quality jobs in other segments of the civil aviation industry.

3.6.5 The EESC views the sharp cuts in employment in the rail industry with great concern. Job cuts such as these lead to considerable social problems in the new Member States, which suffer from high unemployment and an underdeveloped social

security system. Social support measures are urgently required here. The EESC is opposed to any measures, which lead to further job cuts and to a deterioration in the quality of jobs in an industry which is already under strain.

3.7 Effects on rail operators in the new Member States

3.7.1 The Steer Davies Gleave study, quoted above, points out that the poor condition of infrastructure in the new Member States, the poor financial situation of rail operators and ticket prices which are usually below the long-term level of costs, represent additional obstacles to greater competition.

3.7.2 Moreover, rail operators do not have the high-quality rolling stock required to withstand competition.

3.7.3 Regional rail services play an even greater role in the new Member States than in the EU-15. If deregulation of international passenger services has a negative effect on the provision of regional services, this effect will be even stronger in the new Member States. It would hasten the decline in the railways still relatively large share of passenger transport.

4. Conclusion

4.1 In its previous opinions the EESC has always been in favour of revitalising the rail industry in Europe, and has pointed to essential prerequisites to achieving this:

- expanding infrastructure and removing of bottlenecks;
- establishing interoperability between railway systems;
- creating fair competition between transport modes;
- guaranteeing social provisions and rail safety.

4.2 The EESC calls on the Commission and the Member States to help ensure that these conditions are met as fast as possible.

4.3 The EESC underlines the importance of rail-passenger transport in meeting people's need for mobility and its importance as a provider of general interest services.

4.4 The EESC acknowledges the importance of a network service provider and of integrating this with other modes of public transport in the interests of public mobility. This service must not be put at risk.

4.5 The EESC believes that any decision on the deregulation of international passenger services shall be based on extensive and clear knowledge regarding the overall effects on rail-passenger transport and the impact of the measures decided on within the 1st and 2nd Railway Package.

4.6 It therefore calls on the Commission to carry out an adequate ex-ante analysis of the advantages and disadvantages which deregulating passenger services. The analysis should address the effects of deregulation on:

- regional and general interest rail transport, especially in small and medium-sized Member States;
- quality of service for customers;
- employment and working conditions in rail-passenger transport;
- rail operators in the new Member States of Central and Eastern Europe.

4.7 The EESC calls on the Commission initially to present the report on the implementation of market opening for rail freight services, as required by Directive 91/440/EEC (as amended by Directive 2004/51/EC).

4.8 The EESC points out that the 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 [COM(2000) 7 final and amended Proposal COM(2002) 107 final] are still pending in the

Council. The detailed shape of this Directive could have an impact on the rules on the protection of public-service routes within the framework of the deregulation of international rail-passenger services.

4.9 Improvements to the quality of service on passenger routes enhances the attractiveness of this mode of transport, which in turn furthers the European transport policy aim of a sustainable transport system. The main responsibility here lies with the rail operators. However, the EESC is critical of measures which could lower the current standards of service quality. It would give high consideration to measures aiming to improve the quality of services.

4.10 The EESC is of the opinion that promoting better cooperation between railway companies will be the right way to improve service quality for passengers in international rail-passenger transport, especially in regional international passenger transport.

4.11 The EESC would very much welcome it if the Commission entered into a dialogue with European social partners on the impact of deregulation on rail transport, and on the quantity and quality of employment in particular.

4.12 The share of rail-passenger transport in overall passenger transport is considerably greater in the new Member States than in the EU 15. Therefore, the EESC considers it imperative that particular attention be paid to developments in rail-passenger transport in the new Member States and to the impact of opening up the market in these countries. It is in the interest of the entire Community and in line with the aims of the White Paper on Transport Policy that this large share be maintained.

Brussels, 9 February 2005.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

APPENDIX

to the Opinion of the European Economic and Social Committee (in accordance with Rule 54(3) of the Rules of Procedure)

The following proposals for amendments, which won more than a quarter of the votes cast, were rejected in the course of the discussions.

Point 3.1.4

Delete.

Reason

This point does not have anything to do with the deregulation of the railways. Two sectors are being mixed up in an opinion that deals with the development of the Community's railways. It cannot be said that the monitoring of social legislation in road transport is a serious problem, given the existence of various laws on driving and rest times and the working hours of drivers. All this legislation is monitored by macrograph. Moreover, August 2005 will see the introduction of a new monitoring system, the digital tachograph, which will allow for more accurate monitoring of drivers' working hours.

Results of voting

For: 58

Against: 80

Abstention: 7

Point 3.1.6

Delete the last sentence:

'This would include introducing European social legislation on the railway industry.'

Reason

Rail safety in the EU has been regulated by Directive 2004/49 EC.

Results of voting

For: 52

Against: 93

Abstention: 5

Point 3.2.3

Replace with the following:

'In the EESC's view, it would be advisable to analyse the content of this report upon publication in order to ascertain whether the proposal for a directive ought to be amended or modified.'

Reason

In effect, the current wording calls for a halt to the legislative process, which fosters a kind of legal uncertainty that is detrimental to all involved — businesses, employees and customers.

It would seem that a more positive and constructive approach would be to show a clear willingness to take the conclusions on board in order to amend or modify the proposal if necessary.

Thus, a dynamic and open process is maintained throughout.

Results of voting

For: 54

Against: 92

Abstention: 9

Points 3.4.7 and 3.4.8

Replace with the following and number the new point as 3.4.7:

'When the new proposal to amend Regulation (EEC) No. 1191/69 is submitted to the Council of Ministers and the European Parliament, the implications of the text in terms of the deregulation of rail passenger services and maintaining the balance of public service transport should be discussed.'

Reason

The current wording refers to a situation that is no longer relevant. A new text has been drawn up by the Commission and may be submitted to the Transport Council in June. It is not possible to predict what sort of reception it will be given by either the Council of Ministers or the European Parliament.

The suggested wording is in line with a more constructive approach.

Results of voting

For: 68

Against: 90

Abstention: 8

Point 3.6

Delete.

Reason

It cannot be said that the deregulation of rail transport will lead to job losses and that the new jobs created will be of poorer quality, when the deregulation of all other modes of transport has resulted in an increase in jobs. It must be stressed that rail transport is the only mode that has not been deregulated.

Results of voting

For: 66

Against: 102

Abstention: 6.
