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Further integration of the European rail system: third railway package

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1. TOWARDS AN INTEGRATED EUROPEAN RAILWAY AREA: PROGRESS REPORT

Introduction of the new European regulatory framework for rail transport is progressing in line with the reform objectives set out in the White Paper *European transport policy for 2010: Time to decide*.¹ These objectives place the revitalisation of the rail sector at the heart of the sustainable mobility strategy and, to this end, seek to improve the attractiveness and competitiveness of more environmentally friendly modes of transport. They also seek to put customers, and in particular passengers, at the centre of a high-quality transport system.

Directives 2001/12/EC, 2001/13/EC and 2001/14/EC (the “first railway package”) have thus far been transposed by around half the Member States, though the deadline for transposing them was 15 March 2003 (see table in annex). The Commission has brought actions for failure to fulfil obligations before the Court of Justice against those Member States which have not yet notified transposition measures. The Directives have also been taken into account by the new Member States as part of the Community *acquis*. All in all, the Commission hopes they will be effectively implemented throughout the enlarged European Union in 2004. The ground they cover is of key importance to the reform of the European rail sector: they open up international rail freight services to competition, introduce a detailed and transparent framework for infrastructure capacity allocation and infrastructure charging, and require a regulatory body to be set up in each Member State.

Integration of rail systems also requires convergence of technical specifications to ensure the interoperability of rolling stock and equipment. On the basis of Directive 96/48/EC, a series of mandatory specifications were adopted in 2002 for high-speed rail systems. Work now needs to proceed for the rest of the rail system: Directive 2001/16/EC on the interoperability of the conventional rail system accords priority to dealing with aspects of importance to international rail freight, with an initial series of specifications to be drawn up by 20 April 2004. The Commission notes that Directive 2001/16/EC was to have been transposed by all Member States by no later than 20 April 2003 and that on that date eight Member States had yet to notify their transposition measures.

1.1 The “second railway package” and the particular need to cover the training of train drivers

To supplement the above framework, on 23 January 2002 the Commission presented a series of proposals (the “second railway package”) together with the Communication *Towards an integrated European railway area*.² These proposals were:

- A proposal for a **Directive on rail safety**³ to establish the key elements of safety systems for infrastructure managers and railway undertakings. The idea was to develop a common approach to safety and introduce a common system for the issuing, contents and validity of safety certificates, and also, as in other sectors, to introduce the principle of independent technical investigations in the event of accidents.

¹ COM(2001) 370, 12.09.2001.

² COM(2002) 18, 23.01.2002.

³ COM(2002) 22, 23.01.2002.

- An **amendment of the interoperability Directives 96/48/EC and 2001/16/EC**,⁴ basically in order gradually to extend the scope of interoperability to cover the entire rail network.
- A proposal for a **Regulation establishing a European Railway Agency**⁵ to provide technical support for the work on interoperability and safety. Its activity would involve, on the one hand, producing common safety standards and developing and managing a system to monitor safety performance and, on the other, long-term management of the system for establishing, registering and monitoring technical specifications for interoperability.
- A proposal to **amend Directive 91/440/EEC**⁶ by extending the right of access to infrastructure to rail freight services within a Member State and speeding up the opening of the market.

These proposals have received firm backing from the European Parliament and the Council and examination of them is now almost complete. The texts of this “second railway package” should be adopted in the first quarter of 2004.

During the examination of these texts, especially the rail safety directive and the agency regulation, particular attention was paid to the issue of training for drivers and train crews. The first draft of the safety directive took an initial approach to the issue, but it was felt that Community legislation needed to tackle it in a much more detailed fashion. Hence the Commission undertook, at the Transport Council of 28 March 2003, to supplement the “second railway package” with a specific proposal on licences for locomotive drivers. For its part, the European Parliament, as soon as it started examining the texts, underlined the crucial importance it attached to the question of training, and in its amendments at second reading it pointed out that “the development of a safe Community railways system requires the establishment of harmonised conditions for delivering driving licences to train drivers, and on-board accompanying staff performing safety tasks.”⁷

The Commission therefore started work immediately on preparing and drafting a proposal for a directive on drivers’ licences. This work involved a consultation of interested parties, including the national safety authorities, railway undertakings and staff representatives. It also took account of work carried out by the social partners in this area.

As a result, the Commission is now able to present, together with this communication, a full proposal for the certification of locomotive and train drivers engaged in the carriage of passengers and goods in the Community.

1.2 Implementation of the schedule for integrating the European railway area

In its communication introducing the second railway package,⁸ the Commission put forward an implementation schedule for the measures set out in the White Paper for the phase following the “second railway package”. This schedule is reproduced below, with an indication of the current status of the measures.

⁴ COM(2002) 21, 23.01.2002.

⁵ COM(2002) 23, 23.01.2002.

⁶ COM(2002) 21, 23.01.2002.

⁷ Amendment 50 – European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on safety on the Community’s railways A5-0325/2003 of 23.10.2003.

⁸ COM(2002) 18, 23.01.2002.

Measures and schedule set out in the Communication <i>Towards an integrated European railway area</i> of 23 January 2002		Status
<u>Measure No 1</u> The European Commission intends to propose legal measures and suggest complementary voluntary actions to provide a comprehensive system of quality incentives.	<u>2002</u>	<i>Freight service quality proposal in annex</i>
<u>Measure No 2</u> Extension of the scope of the term "applicant" in Directive 2001/14/EC to allow greater numbers of players to reserve railway infrastructure capacity.	<u>2003 / 2005</u>	<i>Examined, but not included in the second railway package</i>
<u>Measure No 3</u> 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.		<i>Not yet put into effect; an initial survey of the activity of these regulatory bodies is needed first</i>
<u>Measure No 4</u> Establish a plan for Europe-wide deployment of the traffic management system (ERTMS).	<u>2002</u>	<i>Proposal due in 2004</i>
<u>Measure No 5</u> 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.	<u>2002</u>	<i>Proposal due in 2004</i>
<u>Measure No 6</u> The Commission will propose measures to reduce noise emissions from new freight wagons.	<u>2003 / 2005</u>	<i>Technical Specification for Interoperability being drawn up</i>

<u>Measure No 7</u> The Commission will propose measures to reduce emissions from new diesel locomotives.	<u>2003 / 2005</u>	<i>Directive adopted⁹</i>
<u>Measure No 8</u> The Commission will enter into a dialogue with the industry to implement voluntary measures reducing noise and emissions from the existing fleet.		<i>Study in progress</i>
<u>Measure No 9</u> The Commission will propose to open gradually the international passenger services market.		<i>Proposal in annex</i>
<u>Measure No 10</u> The Commission will propose actively to promote existing passenger rights to the public, and propose a regulation in order to strengthen passenger rights.	<u>2002</u>	<i>Proposal in annex</i>

Implementation of the above measures is now set to continue by means of four new proposals:

- a proposal for a Directive on the certification of locomotive and train drivers engaged in the carriage of passengers and goods in the Community;
- a proposal for a Regulation on international rail passengers' rights;
- a proposal for a Directive on opening up the market for rail passenger transport services;
- a proposal for a Regulation on the quality of rail freight services.

⁹ Directive 2002/88/EC of the European Parliament and of the Council of 9 December 2002 amending Directive 97/68/EC on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, OJ L 35, 11.02.2003.

2. THE HUMAN FACTOR IN INTEROPERABILITY: A COMMON APPROACH TO DRIVER TRAINING

2.1 The driver's profession: employing highly specific skills in a changing environment

The good level of training and professional skills of the 200 000 train drivers operating in the enlarged European Union is a key asset contributing to the high level of safety of the rail system. This puts driver training and skills at the heart of the railway undertakings' safety management systems. Driver certification will thus be a central requirement when a railway undertaking wishes to obtain a safety certificate in order to operate on an infrastructure.

Driver skills fall into two categories: general skills relating to the job of driver, and specific skills relating to line knowledge, the rolling stock and the operating procedures of the railway undertaking for which the driver works.

The opening-up of the rail freight markets and increasing interoperability will gradually create new prospects for locomotive drivers. A growing number of them will find themselves crossing borders and operating on the network of another Member State. There are already several successful instances of this, achieved thanks to agreements between railway undertakings, which have shown that, with a suitable system of training, this international movement of drivers can considerably enhance the performance of rail transport by avoiding unnecessary stops at borders.

To enable train drivers to operate in the future integrated European railway area, it is important that action be taken now to set up a certification system which fully recognises the specific skills needed to drive a train and at the same time facilitates driver movement and mobility.

2.2 Certification needs to be based on simple principles

The certification system thus needs to be based on a clear and logical distinction between two levels.

Firstly, general knowledge, which is comparable to basic training, acquired by each individual. This general knowledge does not relate to a specific infrastructure or a particular network. It needs to be recognised and to be valid throughout the Community. Its recognition needs to be authenticated by a licence granted to the individual driver.

Secondly, specific knowledge, relating to a specific route. This needs to encompass line knowledge, the rolling stock and the operating procedures of the particular railway undertaking. Accordingly, recognition of this knowledge must necessarily be restricted to a specific context.

The Community instrument proposed observes these simple principles, in that it provides for a single document valid throughout the Community for the first level, and a series of certificates for the second. To be able to operate, drivers will therefore need to be in possession of a licence and a certificate (or several certificates) relating

to the railway undertaking which employs them, the line they will be working on and the rolling stock they will be operating.

3. GUARANTEEING PASSENGERS' RIGHTS TO MAKE THE RAILWAYS MORE ATTRACTIVE

3.1 Inadequate international arrangements

Passengers' rights are, along with punctuality and safety, a key factor when people decide to use one or other mode of transport. In several Member States, there have been instances where positive action by the railway undertaking to uphold passengers' rights (delays, reimbursements, etc.) has enhanced the railway's image and made it more attractive. Passenger confidence that the purchase of a ticket will confer certain rights makes the railways more attractive, and many instances of good practice can be found at national level.

Nonetheless, the situation of passengers on international journeys is often less secure, and railway undertakings sometimes pass the buck to one another as regards liability. The current international arrangements, based on an international convention (CIV¹⁰), are inadequate. The convention essentially governs relations between railway undertakings (and not between passengers and railway undertakings). Moreover, it offers a relatively low level of protection. Lastly, being an international convention, the CIV does not create passengers' rights directly. A Community framework therefore had to be created which was compatible with the CIV but afforded passengers greater protection, including better knowledge of their rights and their means of appeal.

3.2 Guaranteeing minimum rights to facilitate passenger transactions

Access to information and fares, and the option of buying international rail tickets easily, are the very least that is needed to make rail services attractive. In addition, a framework is required for liability in the event of accidents or incidents during a journey or in the event of delay. The principle of compensation also needs to be acknowledged, and thresholds set for the amount of compensation depending on the type of journey. The various channels for making appeals and handling complaints need to be clearly identified so as to facilitate passenger transactions. Lastly, account needs to be taken of the particular needs of people with reduced mobility.

These arrangements to protect passengers' rights will be all the more vital once the market is opened up for certain services. The combination of an open market and a rigorous framework of passengers' rights should generate a positive dynamic in which international rail services improve in quality and become more attractive compared with competing modes, notably air travel, which has its own increasingly detailed framework to protect passengers' rights.

¹⁰ The CIV (Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail) is Appendix A to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999. The texts are available at: www.otif.org.

4. ALLOWING NEW INITIATIVES FOR PASSENGER TRANSPORT SERVICES

4.1 Contrasting markets

Passenger transport services by rail are not a homogeneous market but one which is highly segmented. Of the 6 billion passengers carried each year in the European Union (EU25), the vast majority are making urban, suburban and regional journeys. Much of this traffic is subject to public service obligations and therefore receives public funding.

As the Court of Justice pointed out in a recent case,¹¹ such services have to be organised in accordance with Regulation No 1191/69, the modernisation of which, as proposed by the Commission,¹² is more necessary than ever.

The situation is different for interregional or long-distance national traffic. The development of high-speed rail in several Member States and the prospect of the interconnection of the high-speed trans-European network in 2010 are set to bring profound changes to the framework of these services, making them more international.

Currently, the proportion of rail passengers making international journeys, estimated on the basis of ticket sales for such journeys, already represents around 10% of the railway undertakings' passenger turnover¹³ (2.4 billion euros). These are international journeys, during which the passenger crosses at least one border. It should be noted that international trains generally pick passengers up and put them down within the same Member State (cabotage). This represents a variable but often significant proportion of traffic. For instance, on the journey between Brussels and Cologne, trains are very full between Brussels and Liège, but far less full between Liège and Cologne. Very few international trains, on a few high-speed links, make no intermediate stops within a given Member State.

4.2 The benefit of regulated competition in certain segments

There are two models for opening up to competition. Firstly, a competitive procedure can be used to award a public service contract, accompanied, if necessary, by exclusive rights for a certain period and, where appropriate, by compensation for the public service. This model works well for suburban and regional services. It underpins the Commission's proposal to modernise Regulation No 1191/69 on public service obligations.

The other model consists, as for rail freight, in opening up access to the infrastructure for operators wishing to provide services. It should be noted that opening up access rights is not in itself sufficient to create a situation of genuine competition right away. Before operating, potential competitors will need to have:

- rolling stock and drivers authorised to move through the Member States in which they plan to operate;

¹¹ Judgment of the Court of 24 July 2003 in Case C-280/00 ("Altmark").

¹² COM(2002)107, 21.2.2002; OJ C 151E, 25.6.2002, pp. 146-183.

¹³ For the smaller countries the proportion is much larger: Luxembourg 70%, Belgium 33%, Austria 17%.

- a railway undertaking licence in a Member State;
- a safety certificate issued by the national safety authority of each of the Member States they plan to cross;
- infrastructure capacity (for a scheduled service, the application for capacity has to be submitted to the infrastructure manager around one year before operations are due to start).

This second model, based on free access to the infrastructure, is better suited to long-distance services and to specific services where a commercial innovation is likely to attract new customers (e.g. occasional trains, car trains).

The high-speed trans-European network, which will be linked up by 2010, could also provide scope for the appearance of new competing services.

That is why the proposal now being put forward is designed to take account of the diversity of markets segments by providing a clear and simple link between the area covered by public service contracts (within the meaning of Regulation No 1191/69) and the area open to new initiatives. Under the proposal, all international services would be opened up to competition on 1 January 2010, except for services operating between two specific locations under a public service contract.

This gradual approach strikes a balance between, on the one hand, the need to consolidate the traffic covered by public service obligations (within a framework in the process of modernisation) and, on the other, an opening-up to new initiatives for other types of traffic.

5. RAISING QUALITY STANDARDS IN THE RAIL FREIGHT SECTOR

5.1 Uneven performance, customer expectations

Despite many encouraging initiatives, the average performance of rail freight has yet to reach the level expected by customers. Several examples of success show, however, that with better organisation at international level, player accountability, and serious dialogue on service quality with customers, it is possible to provide a quality service and attract new traffic to the railways. Yet despite these many encouraging signs of renewal, much of the sector is still finding it hard to improve. In some cases, the last few years have even seen deteriorating service and the loss of major customers. For much of the sector, the analysis put forward two years ago in the Communication *Towards an integrated European railway area*¹⁴ still applies.

5.2 Tools to help players improve quality

The initiative being proposed by the Commission is not intended to replace freedom to conclude contracts. On the contrary, customers and railway undertakings are actively encouraged to introduce the most effective systems possible to monitor and improve quality according to their requirements for each type of traffic. What is

¹⁴ COM(2002) 18, 23.01.2002.

being proposed is instead a common base which will apply by default if the railway undertaking and its customer fail to introduce a specific system to improve quality.

To that end, the proposal establishes mandatory minimum clauses for transport contracts, failure to include which will make the latter null and void. These clauses include a requirement for the parties to provide for a system of compensation in the event of freight being delayed or damaged. In addition, the directive introduces minimum ceilings for compensation in the event of delay: the parties have to set the amount by mutual agreement in the transport contract, but in order to provide a reasonable economic incentive the compensation may not be less than 5% of the cost of the transport.

The Commission believes this proposal will act as a strong incentive for railway undertakings and their customers to take a contractual approach to quality management.

Annex

Transposition status of rail sector directives

Directives 2001/12/EC, 2001/13/EC and 2001/14/EC were to be transposed by no later than 15 March 2003. At 15 December 2003 the situation was as follows:

Member States which had notified transposition measures	Belgium, Denmark, Finland, France, Italy, Netherlands, Portugal, Spain
Member States which had notified transposition measures for one or two of the three directives	Ireland, Luxembourg
Member States which had not yet notified measures	Austria, Germany, Greece, Sweden, United Kingdom

N.B. Of the five Member States which have not yet notified transposition measures, four (Austria, Germany, Sweden, United Kingdom) have opened up their rail freight markets to competition on the basis of their national legislation.

Directive 2001/16/EC was to be transposed by no later than 20 April 2003. At 15 December 2003 the situation was as follows:

Member States which had notified transposition measures	Belgium, Denmark, Finland, Luxembourg, Netherlands, Portugal, Spain
Member States which had not yet notified measures	Austria, France, Germany, Greece, Ireland, Italy, Sweden, United Kingdom

The Commission has brought actions for failure to fulfil obligations before the Court of Justice against those Member States which have not yet notified transposition measures.