

COM-3/021

Brussels, 9 December 1999

**OPINION**

of the Committee of the Regions

of 18 November 1999

on the

**Proposal for a Council Directive amending Directive 91/440/EEC on the development of the Community's railways**

the

**Proposal for a Council Directive amending Directive 95/18/EC on the licensing of railway undertakings**

the

**Proposal for a Council Directive relating to the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification**

(COM(1998) 480 final - 98/0265 - 98/0266 - 98/0267 (SYN))

and the

**Proposal for a Council Directive amending Directive 91/440/EEC on the development of the Community's railways**

(COM(95) 337 final - 95/0205 COD ex-SYN)

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**The Committee of the Regions**

**HAVING REGARD TO** the list of Commission proposals pending at 1 May 1999 for which the entry into force of the Treaty of Amsterdam entails a change of legal basis and/or procedure (SEC (1999) 581 final);

**HAVING REGARD TO** the Proposal for a Council Directive amending Directive 91/440/EEC on

the development of the Community's railways

and the

Proposal for a Council Directive amending Directive 95/18/EC on the licensing of railway undertakings

and the

Proposal for a Council Directive relating to the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification

(COM(1998) 480 final - 98/0265 - 98/0266 - 98/0267 (SYN));

**HAVING REGARD TO the Proposal for a Council Directive amending Directive 91/440/EEC on the development of the Community's railways (COM(95) 337 final - 95-0205 COD ex (SYN))**

**HAVING REGARD TO** the decision taken by the Council, announced in its letter of 3 May 1999, to consult the Committee of the Regions on this matter under Article 265, first paragraph, and Article 71 of the Treaty establishing the European Community;

**HAVING REGARD TO** the Bureau decision of 15 July 1999 to issue an opinion on this subject, and to ask Commission 3 - Trans-European Networks, Transport, Information Society - to prepare it;

**HAVING REGARD TO** the Draft Opinion (CdR 58/99 rev. 2) adopted by Commission 3 on 15 July 1999 (rapporteur: **Mr Tabakidis, GR, PSE**);

**HAVING REGARD TO** the decision of the Plenary Assembly on 16 September 1999 to refer the matter back to Commission 3;

**HAVING REGARD TO** the decision of Commission 3, at its meeting on 24 September 1999, to ask the rapporteur to include several amendments from **Mr Bellet**;

**adopted the following opinion at its 31<sup>st</sup> plenary session on 17 and 18 November 1999 (meeting of 18 November).**

#### 1. Introduction

1. Each mode of transport has its own particular role to play in meeting transport needs in the Community. Sometimes the various means of transport complement one another and sometimes they compete. It would be of great benefit to society if there were more coordination and means of transport were more complementary, providing a transport system worthy of the name. If a transport system is to be effective, every constituent part of it, i.e. every mode of transport, must be used to the best possible effect and developed in accordance with its own particular characteristics, especially its comparative advantages. Such an objective is in keeping with the unanimous concern to establish a better balance between road and rail transport for ecological and social reasons.
2. Discussions on the various means of transport should be based on common rules, both within the Member States and between the various sectors. Such common rules are the

principles on which pricing is based, such as the principles of non-discrimination, transparency etc.

3. The aim of the European Union is to achieve balanced development of a system based on the real needs and actual characteristics of European society, such as geographical, economic and political conditions. Railways play a particularly important role in this framework, and it is a role which should be increased. The continued development of rail transport is important socially (large number of jobs), economically (exports, trade) and environmentally, as it can make a substantial contribution to environmental policy in the transport sector.
4. European citizens generally are becoming increasingly aware of the need to support and promote a policy of environmental protection without at the same time impeding economic integration and progress. Priority must be given to the railways as a way of promoting sustainable development. In this sense, any political project should be aimed at transferring transport activities (passengers and freight) from road to rail.
5. In addition, one of the more important advantages of rail transport is the better level of safety compared with other modes of transport. Safety must be part of a European transport policy.
6. For all these reasons the railways need to win back the market share which they have lost in recent years. Between 1990 and 1995, taking all 15 EU Member States together, rail transport dropped from 18.8% to 14.4% in terms of freight tonne kilometres and from 6.8% to 6% in terms of passenger kilometres. Should divergent trends be noted in some Member States, the reasons for such differences in performance will have to be evaluated.
7. Rail transport should be made more attractive, especially for long-haul journeys. Its competitiveness should be enhanced through a package of measures covering all aspects of the rail market, i.e. the quantity and quality of infrastructure, pricing for infrastructure use, reliability of service, ensuring continuity of the rail network, agreements on customs formalities where non-EU countries are involved etc.
8. An important factor in the further development of the railways is their position in relation to road transport, their main competitor. Liberalisation has enabled road transport (like air transport) to become more competitive, making those markets distinctly flexible. The rail sector should likewise gradually cease to be a protected market and should operate in a framework which is more closely tailored to modern needs. However, the necessary improvement in the performance of the rail sector must be done while maintaining at least the high level of safety now achieved, and with no worsening in working conditions. Safety must be the priority of the new legal framework for railways, with an obligation to achieve certain safety standards; each Member State would be free to choose the means for doing so. As in the case of sea and air transport, such liberalisation should be achieved in stages, in conjunction with the necessary accompanying measures, but without the step-by-step approach being used to justify unwarranted, or even detrimental delays. Each stage of liberalisation of the rail sector should be followed by an assessment of the impact of the various measures on rail companies and on society in general. The COR considers it essential, with the adoption of the three Commission directives, for impact studies to be drawn up in each Member State and region and for their findings to be assessed, as well as the impact of the directives in force. Particular attention should be paid to the issues of segmentation, designing a European transport area based on north-south routes that would be liable to further marginalise isolated and peripheral regions, and pressure on

the environment, etc. in a more general context of enlargement involving the progressive entry of the CEECs into the European Union.

## 2. General comments

1. The European Union has already adopted three directives on reform of the rail transport market: 91/440/EEC on the development of the Community's railways, 95/18/EC on the licensing of railway undertakings, and 95/19/EC on the allocation of railway infrastructure capacity and the charging of infrastructure fees. These directives followed on from the White and Green Papers on the Community's railways.
2. The aim of all these measures is to open up the market to new railway undertakings, which will be able to use the existing infrastructure. With this in mind, the first step, taken with Directive 91/440/EEC, was to separate the accounts for infrastructure management from those relating to the provision of rail services. This makes the cost of using the railways more transparent, thus creating the conditions for fair and objective charging for infrastructure use. In other words, the user will be called on to pay the actual cost of transport, so that railways can operate on healthier terms for society as a whole. In practice, countries have found different ways of separating accounts. Some Member States (France, the UK, Sweden, Denmark, Finland, Portugal and the Netherlands) have set up two different bodies, one responsible for infrastructure and the other for transport, while others have one "integrated" body. Under this arrangement, the same legal person is responsible for infrastructure and transport, and accounts are separated either by assigning the two functions to two different departments (as in Austria, Germany, Italy, Spain and Belgium) or simply by publishing separate accounts (as in Luxembourg, Greece and Ireland). It should be noted that when separate accounts are drawn up by a single body only the profit and loss accounts are separated; the Commission, however, proposes requiring separate balance sheets to be drawn up as well. The Commission also proposes that separate accounts be kept for passenger transport (where the Member States can impose public service obligations) and freight transport (which has a more commercial character).
3. Railways are therefore beginning to take a commercial approach, something which was previously lacking in their method of operation. Another important step in this direction is ensuring free access to the infrastructure. The basic terms for such access are specified in Directive 95/18/EC, which lays down the conditions for railway undertakings' access to the market. Lastly, Directive 95/19/EC lays down the basic principles which are to apply uniformly to all undertakings in the sector, not only in relation to pricing, but also in relation to the allocation of capacity, which is often limited or else saturated. The COR asks the Council and the European Parliament to assess the impact of implementing the Directives on sustainable development in Europe's regions, especially due to the payment of infrastructure user charges, deterioration of regional public services, domination of trans-European freight, which will take priority over all other users, possible closure of rail links to certain less-developed regions, and concentration of economic activities in what are now the wealthiest regions.
4. The European Commission's philosophy is that, in order to reorganise the railways and increase their share of the passenger and freight market, the aim should in practice be one of close cooperation with all railways, especially in the international freight sector, the international passenger sector and the national freight sector. The European Commission's proposals for new Directives (amending 91/440/EEC, amending 95/18/EC and replacing 95/19/EC) are moves in this direction.

### 3. Proposals

#### 1. Amendment of Directive 91/440/EEC on the development of the Community's railways

1. The basic idea behind the proposed amendment is the full and obligatory separation of the body managing the infrastructure from any railway undertaking. The provision of transport services thus becomes a purely commercial activity and follows market rules, except in the case of transport services that have a public service function. Member States and regions always play a central role: laying down norms and monitoring observance of the rules. They manage the infrastructure and hence control its development, the necessary investment, future planning, the observance of safety requirements and the smooth operation of the rail market generally.
2. It is also proposed to separate passenger transport from freight transport, at least for accounting purposes. This separation is important, as it enables different criteria to be applied to each case, i.e. freight transport will have a clearer and stronger commercial slant, while passenger transport will in some areas be strongly competitive and in others fulfil a public service function. This separation would give the financial aspect of the different types of transport the necessary transparency.
3. The development of national railway infrastructures and the corresponding national markets is thus governed not only by economic cost/benefit factors but also by more general considerations to do with national and social interests, economic cohesion and regional development. These factors should be taken into account in applying any measures.
4. Some Community countries with special geographical or geopolitical features should be treated differently when it comes to the development of their rail transport markets. Each region of the Community should be examined in the light of its particular circumstances, without this jeopardising or having a negative effect on Community plans to reform the rail transport market.

#### 2. Proposal amending Directive 95/18/EC on the licensing of railway undertakings

1. Under the proposed Directive, railway undertakings providing the services referred to in Article 10 of the existing Directive 91/440/EEC are obliged to obtain a licence from the Member State in which they are established. That licence is valid throughout the Community. Issue of the licence is subject to certain conditions: professional competence, financial fitness and good repute.
2. The basic idea behind the proposed directive is to ensure transparent and equal treatment for railway undertakings and to see to it that in an open market all safety requirements are met for the smooth operation of the rail system, to the benefit of users and society as a whole.
3. An innovation in the proposal is to include undertakings operating urban, suburban or regional rail services in obligatory licensing. It is left up to each Member State, or to each region with responsibility for railways and with its own network, to decide whether to require licensing of undertakings carrying out such activities on its territory. In a market moving towards increasing liberalisation, Member States and regions could use this provision to some advantage.

### 3. **Proposal replacing Directive 95/19/EC on the allocation of railway infrastructure capacity and the charging of infrastructure fees**

1. When choosing a means of transport, users base their decisions on a number of factors. Quality and reliability of service are of major importance, but price is a deciding factor. In the rail sector, the charges to be paid for use of infrastructure have a significant impact on the final price of the transport (passing on the cost). This is a means of creating incentives for transferring transport business from road to rail.
2. The aim of the proposal is to clarify the framework for allocating infrastructure capacity and charging for infrastructure use. Infrastructure costs account for a significant part of the price users have to pay. Under the proposed directive, part of the cost also relates to the scarcity of infrastructure capacity. This might create certain problems when applying the directive if the infrastructure manager does not have any latitude with regard to decision-making or the corrective measures that he can take to remedy, as far as possible, any malfunctioning of the system.
3. Infrastructure capacity must be allocated to railway undertakings by a body that is independent of enterprises and organisations involved in railway operations (to avoid any conflict of interest in such situations). Even if for reasons of transparency the body in question will have to respect the objectives and rules of European national and regional authorities and businesses, its policies and operation must still be monitored by a different higher authority. The infrastructure manager should likewise be able to apply pricing policies based on commercial decisions and not on rigid and predetermined criteria. Transparency and equal treatment are necessary with regard to all undertakings entitled to access to the rail transport market. However, this does not mean that the infrastructure manager should not have some decision-making latitude, depending on the particular circumstances of the infrastructure network he manages.
4. The charges levied for the use of rail infrastructure should be determined in similar ways to those for other competing modes of transport, particularly road transport. It is not fair to internalise, and hence charge for, the external cost of rail transport when a similar pricing principle does not apply in the road sector. The methodological and political problems of such a move are well known. What is more, rail transport has much lower external costs than road transport. We could however consider a form of pricing within the rail sector which takes environmental impact into account; for example, more environmentally-friendly lines could be charged lower fees, at the expense of those which, by virtue of the technology they use, have a more detrimental impact on the environment (by analogy with the road transport sector, where different prices are charged under the Eurovignette system, in accordance with the decision taken by the Transport Council on 1 December 1998). Furthermore, charging based on marginal costs should not lead to rural areas being deprived of railway services.
5. Finally, it is necessary to clarify fully the meaning and role of the newly-coined term "authorised applicant". This new category should be brought into the rail transport market without jeopardising the smooth operation of the system. Under the proposal for a directive, 'a person or legal entity with a commercial or public service interest in procuring infrastructure capacity for the operation of a railway service, who has complied with the necessary requirements to enable him to seek to book capacity' may acquire railway infrastructure capacity. Thus "authorised

applicants" could be not just railway undertakings, but also any operator able to provide a service, e.g. local authority, travel organisation, shipping company, etc. The COR is very concerned about the fact that this right is also extended to shippers, because the result would be to create a market like the road transport market with significant distortion of competition.

#### 4. Proposed accompanying measures

1. To achieve complete restructuring of the rail sector, to the benefit of society as a whole, the proposed arrangements should be accompanied by appropriate supporting measures such as:
  - social policy measures at national and Community level for rail employees;
  - technical and institutional measures for railways, such as ensuring technical compatibility and where possible interoperability of networks, and encouraging freight freeways;
  - definition of the terms and conditions for derogating from these arrangements (state aid etc.), especially with regard to the public service obligation;
  - clear definition of the role of the State in order to ensure the smooth running of the rail system both as regards the necessary competitiveness and as regards the public service which railways represent.

### **Proposal for a Council Directive amending Directive 91/440/EEC on the development of the Community's railways (COM(95) 337 final - 95-0205 COD ex (SYN))**

#### 5. Introduction

1. Since the early 90s the European Union has recognised the need for specific measures to revitalise the Community's railways. Its intention has been to achieve balanced development of all modes of transport while at the same time curbing the steadily dwindling rail market share.
2. However, for a combination of structural, economic and historical reasons, the various modes of transport have developed differently from one Member State to another - a factor which is often regarded as being at the roots of the substantial distortion of competition between them. Balanced development of a transport system framed to respond to the actual needs and intrinsic characteristics of European society (geographical, economic and political conditions) is one of the key political aims of the common transport policy.
3. On the other hand, the European citizen is increasingly concerned by the vital need to protect the environment while at the same time guaranteeing sustainable, long-term

economic development along the path to European integration. Transport safety is another major consideration. All these concerns can be met by developing railways but improving the balance between the various modes of transport.

At the same time, from the inevitably long-term viewpoint of economic benefits, a policy needs to be framed to boost all rail links, including minor ones (contrary to the current policy of closing down 'non-profitable lines' in many countries). Only by guaranteeing rail communications for the maximum number of European industrial centres will it be possible to curb road transport, with attendant economic and environmental advantages.

4. Directive 91/440/EEC on the development of the Community's railways took a first step towards revitalisation.

## 6. Directive 91/440/EEC

1. The main purpose of Directive 91/440 is to establish basic structures to underpin the Community's railways so that the sector can operate with greater transparency and be more closely tailored to market requirements. The separate accounts required for infrastructure management and for the provision of services must be seen in this light.
2. Again with a view to opening up the traditionally protected railway market, Article 10 of the Directive provides for some measure of liberalisation of access into the transit services market. Liberalisation is not unlimited, since it is restricted to international groups of railway undertakings operating international transport services as well as to undertakings operating combined transport services.

## 7. Proposed amendment to Directive 91/440/EEC

1. Four years after the entry into force of the above directive, the European Commission has drafted a proposal to amend Article 10 of the existing directive with a view to opening up access to rail infrastructure to all undertakings operating services for the transport of goods, combined transport services or international services for the transport of passengers.
2. There is currently a lack of consensus among the Member States on this next stage towards liberalisation of the rail market.
3. Obviously such liberalisation can only proceed step by step. It is also clear that the extent to which the Member States' national rail markets are liberalised differs considerably in the absence of a common policy some years ago.
4. The proposed amendment to Article 10 of Directive 91/440/EEC is undeniably a move towards more advanced liberalisation - an entirely valid policy for the purpose of revitalising the railways. However, the implications of the proposed political measures for some Member States whose situation differs from that of the others still remain to be seen. For instance, the social role played by the railways in many countries, in terms of jobs and public services, must not be overlooked.

Strategies therefore need to be set in motion to protect, along with economic interests, the railways' social role.



5. Here the best timing for such political measures is at issue. This point is a suitable focus for a political debate aimed at achieving consensus. Before irreversible political measures are taken, all possible scenarios should be studied, with particular emphasis on a practical, acceptable timetable. Further, any future political measure must seek the best possible integration of all EU regions as a guarantee of the socio-economic cohesion of the Union as a whole.

## 8. Conclusions

1. To create a solid basis of political compromise, a common denominator between the Member States needs to be sought. In the case of railways, convinced as we are that we are on the right road, we must nonetheless work out the proper timetable for implementation, while not ruling out accompanying measures such as technical accounting by traditional railway undertakings of national and Community policies for job protection in the rail sector, promotion of freight freeways, determination of conditions under which derogations may be applicable, such as state aids, especially for the purposes of fulfilling public service obligations, etc.

Brussels, 18 November 1999.

The President

The Acting Secretary-General

of the

of the

Committee of the Regions

Committee of the Regions

**Manfred Dammeyer**

**Vincenzo Falcone**

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