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COMMUNICATION FROM THE COMMISSION

concerning

the development of a Single European Railway Area

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1. INTRODUCTION

1.1. Background

Over the last two centuries transport by rail in Europe evolved primarily within national borders, with each State establishing its own rail system on the basis of local considerations and national industries together with railway companies adopting their own technical and operational standards.. Such evolution led to a structural fragmentation of the European railway system which still today is a major obstacle to the development of a single European railway area. This fragmentation leads to serious problems of efficiency, flexibility and reliability in particular for freight transport as well as to high operating costs preventing rail from becoming a credible competitor against other modes of transport and discouraging private investments by new entrants in the rail market.

Following a long period of decline, since 2000 the European railway industry has managed to increase passengers and freight volumes transported and to stabilise its modal share. The rapid fall in rail employment had also slowed down before the onset of the crisis, since job losses in the incumbents have been partly offset by job creation in newly established railway and services companies. Safety has also improved significantly. In the EU-15 countries, the average number of railway passengers killed in accidents dropped from 104 between 2000 and 2002 to 47 over the period 2005 to 2007; similar trends were observed in most EU-12 countries.

Despite these observed trends it has not been possible to improve the overall modal share of rail freight and passenger transport in line with the objectives set in the 2001 Transport White Paper. Further, the market share of incumbent rail undertakings and new entrants shows that the expected outcome from market opening has been slow to materialise. While the market share of non-incumbent rail freight operators exceeded 40% in three Member States (Romania, United Kingdom and Estonia) at the end of 2008, monopolistic positions still exist in many Member States both for freight and for passenger transport services. Generally speaking, in countries where market opening has progressed faster and new entrants have acquired higher market shares, the freight market has also become more stable.

However, quality problems (particularly as regards reliability) mean the railway operating industry faces difficulties to maintain its present position within the EU transport system, let alone improve it, despite its growth potential in the face of increasing environmental constraints, the success of rail freight in other parts of the world, and the apparent demand of citizens and shippers to make greater use of rail transport.

1.2. Evolution of rail traffic in the EU

After a steep fall from 526.3 to 403.7 billion tkm between 1990 and 2000 (mainly due to a very negative trend in the EU-12), rail freight transport in the EU-27 increased to 453.1 billion tkm in 2007 (+12.2 %). Similarly, after a sharp decrease in the 1990s (from 420.1 billion pkm in 1990 to 370.7 billion pkm in 2000, again mainly due to EU-12), rail passenger transport activities in the EU-27 rose to 395.3 billion pkm in 2007 (+6 %) despite a further decline in Central and Eastern Europe (-18.4 % in EU-12).

Performance of rail freight and passenger transport

thousand mio

	1990		2000		2007	
	freight (tkm)	pass. (pkm)	freight (tkm)	pass. (pkm)	freight (tkm)	pass. (pkm)
EU-15	256.5	268.9	257.1	309.4	297.1	345.2
EU-12	269.8	151.2	146.6	61.4	156	50.1
EU-27	526.3	420.1	403.7	370.7	453.1	395.3

Due to the positive trend between 2000 and 2007, the modal share of rail in intra-EU transport has remained more or less constant since 2000. In freight transport, rail continues to account for close to 11 % of all intra-EU transport activity. In inland freight transport, i.e. excluding air and sea, its share is slightly above 17 %. On the passenger side, the share of rail in intra-EU transport has remained at around 6 %. Looking only at land-based modes, about 7 % of passenger transport is by rail.

The data for 2008 show a decline of around 2 % in freight transport activity across modes, mainly due to the outbreak of the economic crisis in the second half of that year. In passenger transport, rail managed to gain some ground, mainly as a result of above-average growth in high-speed traffic. While the modal split in freight transport was hardly affected by developments in 2008, rail freight appears to have experienced a somewhat bigger drop in activity than other modes during the deepening economic crisis in 2009. The modal share of rail freight transport is therefore likely to have shrunk over the short term. Passenger service activity also slowed in 2009, in particular business travel, but rail appears not to have fared much worse than other modes. The current economic climate has exacerbated some of the structural weaknesses of the rail market and accelerated a consolidation of the railway sector with the acquisition by incumbents of several new freight service operators in 2008 and 2009¹.

1.3. Objectives of EU rail policy

The rail sector is an environmentally friendly mode of transport which can contribute to establishing new forms of mobility that are energy-efficient and limit the risks of aggravating pollution, congestion and (particularly if non-fossil fuel generated electricity is used) climate change. It can deliver high-quality, reliable, safe and secure services and thereby facilitate the sustainable development of the European economy.

¹ COM(2009) 676, 18.12.2009, p. 15.

As the volcanic ash crisis has shown, the continued development of diverse transport modes is vital to ensure the resilience of Europe's transport system, on which our economy depends. Such diversity is also important to provide broad options for tackling the challenges of climate change and energy security. European manufacturers are world leaders in rail technology – especially in the high speed sector. A strong European railway is vital to showcase this and drive the adoption of European technology in other markets.

Ensuring that the potential growth of the railway sector is fully realised is therefore an objective of utmost importance not only of the EU transport policy, but also of economic policy at large.

With these objectives in mind, the European Union needs to establish a Single European Railway Area based on an integrated infrastructure network and interoperable equipment enabling seamless transport services throughout Europe and with neighbouring countries. All European railway operators would then be in a position to offer efficient services meeting passenger and business expectations and better able to compete with alternative transport modes, notably in terms of price, flexibility, journey time and punctuality.

To boost the competitiveness of the rail sector and its environmental friendliness building on what has already been achieved, further measures should be taken as part of a coherent strategy promoting the development of an effective EU rail infrastructure, establishing an attractive and truly open rail market, removing administrative and technical barriers, and ensuring a level playing field with other transport modes. The present communication gives a broad outline of this strategy.

2. PROMOTING THE DEVELOPMENT OF EFFECTIVE RAIL INFRASTRUCTURE

The level of investment in rail infrastructure development and maintenance remains insufficient in many Member States. In several cases, the quality of the existing infrastructure continues to decline. Cross-border connections, including with rail networks in neighbouring countries, remain insufficient. The situation is particularly severe in Central and Eastern Europe. Poor maintenance, slow modernisation and increasing numbers of bottlenecks on the network have a direct effect on the competitiveness of the whole sector. In this context, European Commission policy aims at mobilising international, EU, national and private funds for the development of new rail transport projects, ensuring that the existing infrastructure is adequately maintained and optimised through an appropriate financial environment that stimulates Member State and candidate countries investments in the rail sector, and making it easier to adapt infrastructure to growing specialised demands, in particular to develop high-speed and freight-oriented networks.

2.1. Mobilising funds for the development of rail infrastructure

Overall, rail receives only a small part of investment in infrastructure by Member States, road infrastructure continuing to take the lion's share. This imbalance is particularly marked in Central and Eastern Europe. The European Union has therefore decided to devote a substantial part of its transport budget to the

development of rail infrastructure. Direct interventions of this kind can address the current lack of interoperability of national rail networks and the presence of bottlenecks at cross-border sections. They will have a clear leverage effect on Member States' investments. Under the current financial framework 2007-2013, the bulk of funding for Trans-European Networks for Transport (TEN-T) projects is allocated to the development of railways (more than 63 % of the TEN-T investments: €246 million out of €390 million. The proportion of funding allocated to rail is even higher for TEN-T priority projects (more than 83 % of the total budget, with €129 million for 2007-2013). But other EU instruments — the Cohesion Fund, the European Regional Development Fund (ERDF) and European Investment Bank loans and guarantees — are also making major contributions to investment in the rail sector, particularly in Central and Eastern Europe. About €82 billion from the EU Structural and Cohesion Funds (23.8 % of the total allocation) will be spent on transport between 2007 and 2013, €23.6 billion being allocated for rail infrastructure. In enlargement and neighbouring countries, funding can come from the Instrument of Pre-Accession (IPA) and the European Neighbouring Partnership Instrument (ENPI) respectively.

A further increase in direct EU funding for the development of rail infrastructure will necessarily depend on the next multi-annual financial framework and the possibility to develop new funding instruments and mobilise additional resources in this context. The Commission will outline its approach in the forthcoming White Paper on future EU Transport Policy.

2.2. Ensuring quality of rail infrastructure through an appropriate financial environment

In its 2008 Communication on multiannual contracts for rail infrastructure quality², the Commission set out the measures that Member States and infrastructure managers should take to ensure the sustainable financing of existing rail infrastructure. The level of public intervention should in particular be consistent with medium to long-term investment strategies and combine the principle of financial equilibrium with charging at the direct cost of operating an additional train as the rule (full cost recovery being allowed only as the exception and on certain conditions).

Sustainable financing of rail infrastructure is the primary objective of various changes proposed by the Commission in the revision of the existing EU market access legislation. The Commission is seeking to establish a financial environment entailing clear obligations for the competent public authorities to commit to medium and long-term investment strategies providing better predictability of business opportunities for the rail sector, and creating strong incentives for rail undertakings to invest in new safe, interoperable and environment-friendly technologies through more effective charging systems. All this should stimulate further private and public investment in the rail sector at national level.

² COM(2008) 54, 6.2.2008.

2.3. Developing more specialised networks

The TEN-T policy is central to the development of high-speed lines and freight infrastructures on a pan-European scale. Having increased considerably in the 1990s, the length of the high-speed network doubled between 2001 and 2007 in Europe, totalling 5 764 km in 2008, with more than 2 500 km of additional high-speed lines under construction in Belgium, France Germany, Italy, Spain and the Netherlands in 2009. By 2007, high-speed rail transport constituted 23 % of the total EU passenger rail market measured in passengers/kilometres and has succeeded in recapturing markets from cars and aviation.

Similarly, the rail freight market continues to require infrastructure and operating practices offering a better and more reliable service to freight operators. This is why the Commission issued in September 2008 a Communication detailing guidelines and practical proposals to monitor the quality of rail freight services³; the European Parliament and Council are about to adopt a Regulation establishing a European rail network for competitive freight, which the Commission had proposed in December 2008. The Commission will propose further measures if the development of the rail freight market continues to be unsatisfactory.

Through the revision of the existing EU rail market access legislation, the Commission intends to establish a financial environment conducive to public and private investments in the rail sector.

The development of rail infrastructure also requires a broader view of new funding instruments (both public and private) and the mobilisation of appropriate resources under the next multi-annual financial framework.

Besides the creation of a European rail network for competitive freight, the Commission will consider the need for additional measures to improve the quality of rail freight services, including the development of tools to monitor the performance of rail operators and the publication of quality indicators.

In 2011, the Commission will present the results of its work currently underway to develop further the links between TEN-Ts and European Neighbourhood countries, and the integration of candidate country networks with the TEN-T network.

3. ESTABLISHING AN ATTRACTIVE AND GENUINELY OPEN RAIL MARKET

3.1. Enforcing and improving existing rules

The Commission has long considered that the improvement of the functioning of the internal market should stimulate the rail industry to become more efficient and responsive to customers' needs. Thus the development of EU rail market access legislation has progressively encouraged market opening based on a genuine separation between infrastructure management and transport operations. Rail freight

³ COM(2008) 536, 8.9.2008.

transport and international passenger transport by rail have been fully open to competition from January 2007 and January 2010 respectively.

However, competition between railway undertakings is still limited by various factors stemming from the protectionist behaviours of historical incumbent operators and the collusive management of rail infrastructure, which, being a natural monopoly, should be accessible to all applicants in a fair and non-discriminatory manner. Insufficient transparency of market conditions and ineffective functioning of the institutional framework, in most Member States, continue to make the provision of competitive rail services difficult. Essential information for new entrants — concerning application or appeal procedures, for instance — is not yet systematically and easily accessible. Operators entering a new market continue to face discrimination in obtaining access to the infrastructure and rail-related services, which are often owned and operated by the incumbent rail undertaking.

Member States' regulatory bodies encounter difficulties in carrying out their supervision duties over infrastructure managers, in particular to ensure no discrimination against new entrants and to check whether charging principles and accounting separation are properly applied. These difficulties are often due to a lack of staff and other resources, and may be compounded in cases where the regulatory body does not have sufficient independence from the infrastructure managers, incumbent rail undertaking or the ministry which exerts ownership rights over the incumbent operator. The regulation on a rail network for competitive freight requires closer cooperation between infrastructure managers along the national sections of European corridors; this in turn requires parallel closer cooperation between the corresponding national regulators. The experience to be gathered here may be useful should the Commission later consider taking a more integrated approach to market supervision in the single European railway area. Existing legislation already goes some way to dealing with these issues. But the Commission is aware that problems will persist if the EU regulatory framework is not properly implemented. This is why the Commission has already taken the initiative in launching infringement procedures against Member States who fail to apply EU law properly. It also appears that existing rules need to be clarified and modernised. In the draft Directive adopted together with this Communication, the Commission therefore proposes to amend the existing market access rules to remove the obstacles to fair competition that have been identified.

The functioning of public passenger transport services by rail is also regulated by EU law. To ensure fair competition among railway undertakings, there is a clear need to enforce these provisions, in particular those related to the appropriate level of public service compensation.

3.2. Completing the process of market opening

However, market opening will remain incomplete as long as European railway undertakings do not have the right to provide domestic passenger transport services throughout the European Union. In this context, the Commission has already launched a study on the regulatory options available for domestic passenger market opening. Since a very large part of domestic passenger services is provided under public service contracts, the Commission will also examine the conditions for awarding public service contracts for rail transport in Member States. An evaluation

of the current practices under Regulation (EC) No 1370/2007, which entered into force in December 2009, is already underway. These initial activities, which include consultation of interested parties, in particular the social partners, should enable the Commission to present an overall evaluation of the costs and benefits of competition for domestic passenger transport in 2011 and then adopt, a new initiative to facilitate further market opening by 2012 at the latest, as required by the legislation in force. In proposing any such initiative the Commission will include the measures necessary to ensure that market opening genuinely improves services, and does not have unexpected negative effects.

Through the revision of the existing EU rail market access legislation, the Commission intends to remove the obstacles to fair competition that have been identified since 2001.

The Commission will also propose to extend market opening to domestic passenger traffic, whether under public service or private contracts, subject to appropriate quality safeguards.

The question of reinforcing the requirements on institutional separation between infrastructure managers and railway undertakings and establishing appropriate institutional arrangements to ensure more integrated supervision of the EU rail market will also be examined in this context.

4. REMOVING ADMINISTRATIVE AND TECHNICAL BARRIERS

4.1. Towards a common approach to safety

Safety requirements and the lack of interoperability still impose significant barriers to entry in the EU rail market. These barriers stem mainly from the cost and duration of the procedures involved at national level, their disparity across Europe and the lack of transparency and predictability.

The Commission has already laid the groundwork for progress in this field by harmonising safety certificates for railway undertakings and introducing common safety targets and methods. However, to be successful these measures require above all the establishment of strong, efficient and independent national safety authorities (NSAs) interacting with one another to avoid unnecessary multiple or duplicated checks. The Commission will therefore continue to monitor Member States' compliance with the EU legislation governing the creation of such bodies.

This regulatory framework gives a leading role to the European Railway Agency (ERA) in gradually harmonising national safety processes and procedures and progressively replacing them with common methods. The Commission will therefore ensure that ERA is in a position to carry out these tasks. As announced in September 2009, it will also examine how ERA's role can gradually evolve to complement or even take on at least in part the activities of NSAs in the certification and authorisation processes. After the necessary feasibility study, including stakeholder consultation, the Commission could put forward a legislative proposal in the near future.

4.2. Removing interoperability barriers

The adoption of harmonised and clear technical specifications for interoperability (TSI) is necessary to remove the existing entry barriers. Much has already been achieved with the adoption by the Commission of a first set of specifications for both high-speed and conventional rail. Other important TSI are due to be adopted in the near future. At this stage all TSI remain applicable only to the Trans-European Network; however, a mandate to prepare the extension of their scope has just been given to ERA, so that the whole railway system should be covered by harmonised specifications by 2013.

As regards telematics applications for passengers and freight, the rail industry is asked to set up integrated platforms for communicating between different economic parties and customers. The Commission intends to promote the timely and full deployment of these platforms, which variously aim to provide information and issue tickets to rail passengers (allowing improved through-ticketing arrangements for example), enabling efficient communication between different infrastructure managers, railway undertakings and others operating trains, wagons and intermodal units.

The adoption by the Commission of the deployment plan for the European Rail Traffic Management System (ERTMS) in July 2009 and the current review of the TEN-T policy have been conceived to accelerate the installation and effective use of the latest interoperable traffic management equipment.

But because of the long lifespan of rail equipment and the need to keep investment costs at a level that the sector can bear, moving towards interoperability is a slow process. However, in the coming years the Commission must take steps to shorten the period of migration from legacy systems to the European target system on the basis of common deployment plans that indicate the scheduled phasing-out of old systems and their replacement by interoperable systems, as has already been done for ERTMS.

In the meantime, to address the present lack of interoperability, ERA has been mandated to develop tools that will make it easier existing rail vehicles into service in all Member States under the principle of cross-acceptance of national rules.

The Commission is progressively adopting harmonised safety and interoperability measures and provides incentives for the installation of interoperable equipment in order to remove administrative and technical barriers to entry in the EU rail market.

With regard to the process of safety certification of railway undertakings and authorisation for placing in service of rail vehicles into service, there appears to be a lack of effective and harmonised decision-making mechanisms involving all parties, in particular national safety authorities. The Commission is therefore considering how to confer on the European Railway Agency the power to audit the established mechanisms and to extend its role in the certification and authorisation processes in the near future.

5. ENSURING A LEVEL PLAYING FIELD WITH OTHER TRANSPORT MODES

Making transport sustainable is a long-term strategic priority aiming to meet future mobility needs and challenges. In its Communication on the Future of Transport⁴, adopted by the Commission on 17th June 2009, and as part of the Greening Transport package, the Commission has proposed measures to internalise the external costs of transport in a coordinated and balanced manner across modes so that the charges reflect the level of the external cost imposed on society at large. Today, it is vital for the transport sector to contribute to the Commission's key priorities of sustainable development and maintaining competitiveness in Europe.

Internalising external costs is the right way to ensure that pricing systems reflect more accurately the true costs borne by transport modes and to give the right price signal to transport users, so that they have an incentive to change their behaviour in order to reduce those costs.

Today there is no genuine level playing field and fair inter-modal competition. The charging principles currently applicable to rail, road and air transport differ vastly. The basis (infrastructure costs) and the instruments for internalising or modulating external costs (in particular air pollution, noise, climate change and congestion) are still very diverse. For the rail sector Member States are allowed to modulate infrastructure access charges to take account of the cost of the environmental effects caused by the operation of the train. However this modulation must not result in additional revenues for the infrastructure manager unless such charging is applied at comparable level for competing modes of transport.

The Commission proposal to revise the 'first railway package' and the measures set out in the Greening Transport package in the field of road freight transport (review of 'Eurovignette' Directive 1999/62/EC⁵) already contain new provisions aimed at ensuring convergence between the charging principles applying to rail and road transport and paving the way for a genuine level playing field among transport modes. While the revised Eurovignette Directive will allow the internalisation of external environmental and congestion costs, the Commission proposes in the revision of the first railway package to introduce a scheme of harmonised noise-differentiated track access charges under specific conditions and facilitate adaptation of the charging schemes to take into account other environmental effects throughout the European Union.

The Commission is convinced that the above proposed rules, if properly implemented, will help to make EU transport more sustainable and more efficient. Increasing the railways' share in total transport volumes is an important and indispensable part of this vision. But to maximise rail's environmental competitiveness, additional measures could be required, in particular to stimulate further energy efficiency.

⁴ COM(2009) 279, 17.6.2009.

⁵ COM(2008) 436, 8.7.2008.

The Commission intends to make sure that the principles of cost recovery across transport modes converge to create a multi-modal level playing field. For rail, the revision of the existing EU rail market access legislation should ensure that track access charges take into account the environmental effects of train operations.

The Commission is also considering the possibility of adopting new measures to stimulate further the energy efficiency of the rail sector.

The Commission intends in the near future to consult all interested parties on the initiatives outlined in this Communication. Stakeholders will thus have a say in shaping the priority actions for the next five years.