

Single European railway area. Recast

2010/0253(COD) - 17/09/2010 - Legislative proposal

PURPOSE: the recasting of regulatory framework establishing a single European railway area.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: concerned at the decline of the European railway sector witnessed since the 1970s, the European Community adopted a certain number of legislative measures aimed at reviving the railways by gradually creating a “single European railway area”.

The first railway package Directive 2001/12/EC, Directive 2001/12/EC and Directive 2001/13/EC - adopted at the end of 2000 signalled the desire to reform the regulatory framework to ensure the railway sector's integration at European level and to enable it to face up to the competition from other transport modes on the best possible terms.

With this new regulatory framework, the railway industry has managed to stabilise the volumes transported and, in some Member States, to recover market share from the roads. However, the growth of rail freight in terms of tonnes transported during recent years has not been strong enough to recover the market share of 2.3 percentage points lost between 1995 and 2003. The current economic climate is exacerbating the weak performance of the rail market. Freight services (including rail) have recently suffered a significant drop in activity (between 20% and 50% depending on the market segment) and passenger service activity has also slowed.

The development of the railway sector and its capacity to compete viably with other modes of transport are **still hampered by serious problems** related to (a) inadequate financing and pricing of the infrastructure, (b) persistent barriers to competition and (c) lack of appropriate regulatory oversight. Two problems need to be addressed:

- the **level of investment** in rail infrastructure development and maintenance remains insufficient in a large number of Member States. In many cases, the quality of the infrastructure continues to decline:
- **competition between railway undertakings is limited** by various factors. Insufficient transparency of market conditions and a poorly functioning institutional framework continue to make it difficult for new entrants to provide competitive rail services.

There are weaknesses, ambiguities and gaps in the current regulatory framework which need to be addressed to meet fully the initial objectives of the legislation. A recast of the first railway package is considered by the Commission as one of the ways to tackle them.

IMPACT ASSESSMENT: based on extensive research and evaluation, the Commission came up with 37 measures that could potentially contribute to achieving each of the objectives of the proposal. A thorough pre-screening of these 37 measures resulted in the selection of a package of 26 measures.

Following the decision to carry out an impact assessment for an initiative to recast the first railway package, an external study was commissioned to *PriceWaterhouseCoopers Advisory(PWC)*. A stakeholders' consultation involving almost 380 organisations was carried out in the context of the external study undertaken by PWC.

Based on the external study, as well as the conclusions of the stakeholders' consultation process, the Commission made a quantitative and qualitative assessment of the impact of the whole package of pre-

selected measures. It examined alternative options for the new measures envisaged to modernise the existing regulatory framework, some of which had not previously been subject to impact assessment.

LEGAL BASE: Article 91 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposed recast has three horizontal objectives:

- 1) The **simplification, clarification and modernisation of the regulatory environment in Europe**: legal simplification through consolidation and merger is the first horizontal objective underpinning this recast initiative. Elimination of existing cross-references of the three Directives through restructuring and merging into a single rail access code would be instrumental in attaining this objective.
- 2) The **clarification of some provisions of rail access legislation** would facilitate proper transposition and efficient implementation of European Union law in all Member States.
- 3) The **modernisation of the legislation** by eliminating outdated provisions and the introduction of new provisions which respond more appropriately to the functioning of the market today (e.g. relating to new entrants and full or partial State ownership of infrastructure).

The proposed recast of the first railway package encompasses (a) the adequate financing of and charging for rail infrastructures, (b) the conditions of competition on the railway market, and (c) the organisational reforms needed to ensure appropriate supervision of the market.

The **first objective** consists of ensuring adequate, transparent and sustainable funding of the infrastructure and, thanks to better predictability of the infrastructure development and access conditions, i) facilitating investments by railway undertakings, together with a more appropriate level and structure of infrastructure charging, ii) improving the competitiveness of rail operators vis-à-vis other transport modes and iii) contributing to the internalisation of environmental costs

The **second series of objectives** involves i) avoiding distortions of competition due to the use of State funds for commercial activities, ii) preventing commercially sensitive information from being collected by incumbents and used against their potential competitors, iii) eliminating conflicts of interest in the management of rail-related services and iv) increasing their availability for new entrants as well as v) increasing market transparency to ensure effective competition.

Regarding **regulatory oversight**, the proposed recast intends to ensure that regulatory bodies are in a position to carry out their duties effectively, thanks to reinforced independence, extended competencies, and additional means at their disposal.

The main proposed amendments are as follows:

- the separation of accounts between the activities that enjoy a legal monopoly from those that are subject to competition;
- the obligation for Member States to publish medium to long-term railway sector development strategies that make it possible to meet future mobility needs and are based on sound and sustainable financing of the railway system. It will stimulate long lifecycle investments on which the rail industry relies;
- a clarification of the general principles applying to cross-agreements between rail undertakings, between Member States, and between Member States and third countries;
- the updating of the provisions relating to the responsibilities of the regulatory bodies. Their competences will explicitly cover decisions related to access to and charging for rail-related services which are essential to allow market entry and ensure fair competition;

- to enhance cross-border cooperation and improve market entry conditions, regulatory bodies will have to cooperate for the adoption of decisions on access or charging issues relating to international services;
- the rail market monitoring tasks of the Commission will cover items such as rail infrastructure investments, price developments and quality of rail transport services and public service obligations for rail passenger transport.

BUDGETARY IMPLICATION: the proposal has no implication for the Community budget.