

Single European railway area: opening of the market for domestic passenger transport services by rail and governance of the railway infrastructure. 4th Railway Package

2013/0029(COD) - 24/10/2016 - Commission communication on Council's position

The Commission adopted a communication on the position of the Council on the adoption of a Directive amending Directive 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure.

The general objective of the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU ('the Governance Directive') is to further develop the single European railway area by opening up domestic rail passenger markets to competition and to create a level playing field for all railway undertakings.

To attain this objective, the Commission proposed new rules to strengthen the independence of infrastructure managers, prevent cross-subsidies from infrastructure management to railway operations and improve coordination between different actors in the railway market.

This proposal is part of a comprehensive package of six legislative proposals to deliver better quality and more choice in rail services in Europe.

Comments on the Council position: the Commission considered that the position adopted by the Council at first reading **endorsed the main objectives of the Commission proposal**. In particular, it provides for the opening of domestic rail passenger markets to competition and for improved governance rules on the management of infrastructure.

Although the Council position does not go as far as the Commission would have wished on a number of points, it is a meaningful step forward compared to Directive 2012/34/EC for a number of reasons:

Separation requirements between infrastructure managers and other entities: the Council position provides greater flexibility of structures, and in particular the possibility to maintain (or revert to) a vertically integrated model.

While the Commission considers that vertical separation remains the most straightforward way to ensure the non-discriminatory treatment of new entrants, it appreciates that the Council position introduces a number of new safeguards. These are designed to ensure the impartiality of infrastructure managers, which include notably limitations on double mandates and the avoidance of conflicts of interest.

Protect all infrastructure management functions from undue influence: the Council position restricted the application of the most stringent rules to the essential functions. The Commission regretted that the opportunity to introduce broader and stricter safeguards applying to all infrastructure management functions, in particular as regards vertically integrated undertakings, was missed. However, it also noted that new general rules have been introduced to ensure transparency and impartiality also in traffic management and maintenance planning.

Outsourcing: the original concept of ‘fully fledged infrastructure manager’ handling all functions at the heart of the railway network was not taken up by the Council. Instead, the Council opted for a more flexible approach, where Member States are free to explore the possible benefits arising from outsourcing and public private partnerships for infrastructure management. The Commission can accept this more flexible approach, in the light of the provisions introduced to ensure that conflicts of interests are avoided and that infrastructure managers bear full responsibility and dispose of powers of supervision over any outsourced functions.

Financial transparency and accounting separation: the new rules shall ensure that neither infrastructure charges nor public funds can be diverted from their destination in order to cross-subsidise activities carried out in competition with other undertakings.

Mandatory cooperation: the Council position called for mandatory cooperation between infrastructure managers at European level as well as with their users. This cooperation is expected to improve infrastructure managers’ performance and customer orientation.

Regulatory bodies: the further reinforcement of regulatory bodies’ powers are another crucial element of the package. The new rules will allow for effective enforcement by national regulatory bodies and the Commission.

In conclusion, the Commission noted that while the Council position falls short of the wide-ranging amendment of the legislative framework proposed by the Commission in 2013, **the amended proposal remains of overriding importance** to further develop the single European railway area without further delay by ensuring that the remaining national monopolies on domestic passenger transport by rail are dismantled.

In a spirit of compromise, the Commission **accepted the position adopted by the Council** thus allowing the European Parliament to adopt the final text in a second reading.