

Development of Community's railways (amend. Directive 91/440/EEC). Railway package

1998/0265(COD) - 28/03/2000 - Council position

The Common Position fully embraces the common objective of the proposals submitted by the Commission. It also endorses the broad lines of the means proposed in this Directive to attain that objective. Nevertheless, the wording of the proposal has been altered considerably in the course of discussions in Council. The key points of the Common Position are given below. It should be pointed out that there are several points on which the Common Position differs from the original proposal; on the other hand, the Common Position is much closer to the Commission's amended proposal. The main amendments made by the Council are as follows: - train operations which are limited to providing solely shuttle services for road vehicles through the Channel Tunnel, are to be excluded from the scope of the Directive; - it is specified that the term "railway undertaking" also includes undertakings which provide traction only. Furthermore, the Common Position has also introduced a new definition of "international freight service" so as to avoid any interpretation problems with Article 10(3) arising from the fact that one and the same wagon may form part of different trains in the course of one journey, and to specify that this provision does not include cabotage rights. The Council has added paragraphs relating to the separation of rail operating service from infrastructure management activities in order to secure the objective of fair and non-discriminatory access to them. To this end, the Common Position provides as follows that: - the objective in question must be shown to have been achieved; - undertakings which provide rail transport services may not be entrusted with essential functions, in particular, those relating to the issue of licences, allocation of train paths and charging for railway infrastructure. However, railway undertakings can be entrusted with merely collecting the charges and with managing infrastructures outside these essential functions, for example with investment, maintenance and financing; - these rules on separation may be waived if a Member State has established an independent rail regulator to ensure neutral, non-discriminatory access to the infrastructure; - the Directive does, however, provide for two mechanisms to guarantee neutral, non-discriminatory access to infrastructures: the Commission is required to submit a report on this subject within the framework of the European Rail Observation system. Moreover, it is provided that the Commission, assisted by an advisory committee, be able to examine and possibly annul the right of access measures taken by a Member State in the event that they are not equitable. With regard to the safety standards, the Common Position establishes the responsibilities of the Member States in the field of safety and then refers to the bodies which are to accomplish the corresponding tasks, including a reference to the principle that those bodies are to be independent of railway undertakings. It, nevertheless, provides a derogation from that principle for the enforcement and monitoring of safety standards and rules, provided neutral and non-discriminatory execution of these functions is guaranteed. Finally, it provides that the mechanisms for guaranteeing the non-discrimination in the essential functions is also applicable on the subject of safety. Moreover, the Council has taken care to clarify the text by indicating that public funds for activities relating to passenger-transport services must be shown separately in railway company accounts. In addition, the Common Position extends the right to access and transit via the railway infrastructures of the Member States to all railway undertakings for the purpose of operating international freight services, although it limits these rights to the most important part of the Trans-European Rail Freight Network, the TERFN. Lastly, the Common Position provides for the creation of a European Rail Observation System, the tasks for which are described in Article 10b, and that it should be run by the Commission. Several derogations are provided for in the Common Position concerning the application of certain measures in Ireland, Northern Ireland and in Greece, as well as for Luxembourg.