

Railway transport of passengers: opening to international competition, Rail Market Access. 3rd package

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COMMISSION'S IMPACT ASSESSMENT

For further information about this issue, please refer to the summary relating to the Commission's proposal COM(2004)0139 on the full opening of the rail transport market for passengers.

1- POLICY OPTIONS AND IMPACTS

During the first and second reading discussions on the second railway package, the European Parliament insisted on a full opening of the rail transport market, not only for freight, as put forward by the Commission in its proposals and accepted by the Council, but also for passengers. The latter, however, had not been proposed by the Commission and this amendment was rejected by the Council. However, the European Parliament insisted on the introduction of market opening measures for passenger transport, and increased pressure on the Commission and the Council.

The Commission considered several options and policy instruments to achieve the White Paper aims in respect to passenger transport as set out in the White Paper.

1.1-Option 1:Opening of the market for international passenger services only, without cabotage (where international trains pick up passengers and set them down in the same Member State). In this option, railway undertakings will get access to the network of the Member States to operate services between two or more Member States. Railway undertakings will not be allowed to carry passengers between stations located in the same Member State. Links covered by an international public service contract will be excluded. The international, non-stop service between Brussels and Paris, the Thalys, is an example of a service allowed under this option. Embarking and disembarking in the same Member State will not be allowed.

1.2- Option 2: Opening of the market for international passenger services with cabotage. As in the first part of option 1, but railway undertakings are allowed to carry passengers between stations served by the international service in one Member State. Links covered by a national or an international public service contract are excluded. The railway undertaking is not allowed to operate services within a Member State only. An example could be an international service between Brussels and Cologne, which is allowed to carry passengers between Belgium and Germany, as well as within Belgium or Germany, provided none of the passengers is transported from and to destinations covered by a public service agreement.

1.3- Option 3:Opening of the market for international passenger services with cabotage. As in the first part of option 1, but railway undertakings are allowed to carry passengers between stations served by the international service in one Member State. Links covered by a national or an international public service agreement are included. The railway undertaking is not allowed to operate services within a Member State only. An example could be an international service between Brussels and Cologne, which is allowed to carry passengers between Belgium and Germany, as well as within Belgium or Germany, regardless whether the passengers transported from and to destinations covered by a public service agreement.

1.4- Option 4: Opening of the market for international and national passenger services. Railway undertakings will get access to the network of the Member States to operate regardless whether or not borders are crossed. Links covered by a national or an international public service contract will be excluded.

1.5- Option 5: Opening of the market for international and national passenger services. Railway undertakings will get access to the network of the Member States to operate regardless whether or not borders are crossed. Links covered by a national or an international public service contract will be included. This is the full market opening option.

1.6- Option 6: The ‘Business as usual’ option. No changes to the current regulatory framework.

For all 6 options, the existing regulatory framework concerning capacity allocation, safety, certificates, licenses and interoperability will remain fully applicable. This means that railway undertakings must be in the possession of a European licence as well as a safety certificate allowing them to operate services with the rolling stock they own or lease and the staff they employ. Railway undertakings must also obtain the capacity to run their services.

Several policy instruments were taken into consideration to implement the above-mentioned options:

a) A Regulation to be adopted by the European Parliament and the Council of Ministers, containing provisions allowing for the implementation of any of the first 5 options mentioned above. The provisions of a Regulation are directly applicable and do not require further implementation in the Member States, but its main inconvenience is that it requires a further modification of the already existing legal framework, notably the amended Directive 91/440;

b) Amendment of Directive 91/440: this Directive already defines the framework conditions for access to the rail infrastructure in the Member State. The main requirement to implement the second option mentioned above is a slight modification of these framework conditions, whilst maintaining the institutional framework put in place by the rail acquis;

c) Self-regulation by the railway sector itself. Market access in the railways sector as in all other network sectors has always been regulated by the legislator, and not left to the good will of the industry itself. The Community of European Railways (CER) recognised that this should be a political decision.

CONCLUSIONS: The most logical and appropriate instrument to implement any of the options 1 to 5 is the amendment of Directive 91/440, as it has been used for all the other segments of the rail market.

The extended impact analysis comprised a modelling and analysis exercise. For the modelling exercise, a reference scenario was defined, against which to assess the effects of the various market opening scenarios in 2020, assuming the implementation of the measures in the proposal for a Directive will be carried out in 2010.

The main conclusions from the modelling exercise and the stakeholder analysis can be summarized as follows:

The proposed market opening scenario, free access for railway undertakings to the Member States’ network in order to provide international services, including cabotage, will be beneficial.

The contemplation of market opening measures - particularly for an industry as complex, diverse, and politically-influenced as the European railways - must rely on qualitative judgements rather than firm predictions of quantitative impacts (indeed, one of the major benefits of competition is the percolation of new behaviour and products into an industry, which policy-makers cannot anticipate in detail).

The key change introduced by a new (amended) Directive would be to allow all appropriately licensed railway undertakings (and not simply international groupings, as under Directive 91/440) to operate international passenger train services anywhere in the Community; for the majority of international passenger services in Europe, cabotage access to domestic passenger flows is essential to sustain a commercially viable rail service; the indicative results of the impact analysis confirm that market opening may lead to significant changes in service and fare levels, with impacts on state aids and investment.

It remains impossible to predict with accuracy the effects of domestic open access while the interpretation of the EU acquis on the procurement of public services remains the subject of legal and policy debate. Clarity in this area must be reached before further market opening is implemented: to open the domestic rail market within an uncertain environment could be more damaging than continuing with the *status quo*. Implementation of additional legislative provision in order to ensure open access for rolling stock would be unnecessary: the market should be allowed to adapt, and existing competition regulation should act to prevent abuses of conduct. Implementation of additional legislative provision in order to ensure open access for rolling stock would be unnecessary: the market should be allowed to adapt, and existing competition regulation should act to prevent conduct abuses within this changing market environment within this changing market environment.

2- FOLLOW-UP

The legislative proposal contains a provision requesting the Commission to submit a report to the European Parliament and the Council on the implementation of this Directive on 31 December 2012 at the latest, 2 years after the final date for implanting its provisions. Within the framework of the Railway Market Monitoring Scheme, it is intended to continue to monitor all the relevant aspects of this railway market, which includes, obviously, the passenger market.