Basic information

2004/0047(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Railway transport of passengers: opening to international competition, Rail Market Access. 3rd package Amending Directive 2001/14/EC 1998/0267(COD) **Subject** 2.60 Competition 3.20.02 Rail transport: passengers and freight	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CODE EP Delegation to Conciliation Committee	JARZEMBOWSKI Georg (PPE-DE)	29/01/2007

Former committee responsible	Former rapporteur	Appointed
TRAN Transport and Tourism	JARZEMBOWSKI Georg (PPE-DE)	28/07/2004
TRAN Transport and Tourism	JARZEMBOWSKI Georg (PPE-DE)	22/08/2006

Former committee for opinion	Former rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2747	2006-07-24
Transport, Telecommunications and Energy	2568	2004-03-08
Transport, Telecommunications and Energy	2589	2004-06-10
Transport, Telecommunications and Energy	2680	2005-10-06
Agriculture and Fisheries	2819	2007-09-26
Education, Youth, Culture and Sport	2802	2007-05-24
Tourism	2695	2005-12-01

European Commission	Commission DG	Commissioner
	Energy and Transport	BARROT Jacques

Key events			
Date	**Event**	**Reference**	**Summary**
03/03/2004	Legislative proposal published	COM(2004)0139	Summary
08/03/2004	Debate in Council		
10/06/2004	Debate in Council		
15/09/2004	Committee referral announced in Parliament, 1st reading		
19/04/2005	Vote in committee, 1st reading		Summary
12/05/2005	Committee report tabled for plenary, 1st reading		
30/05/2005	Committee report tabled for plenary, 1st reading	A6-0143/2005	
27/09/2005	Debate in Parliament		
28/09/2005	Decision by Parliament, 1st reading	T6-0354/2005	Summary
28/09/2005	Results of vote in Parliament		
06/10/2005	Debate in Council		Summary
24/07/2006	Council position published	05895/2/2006	Summary
28/09/2006	Committee referral announced in Parliament, 2nd reading		
19/12/2006	Vote in committee, 2nd reading		Summary
21/12/2006	Committee recommendation tabled for plenary, 2nd reading	A6-0475/2006	
17/01/2007	Debate in Parliament		
18/01/2007	Decision by Parliament, 2nd reading	T6-0003/2007	Summary
18/01/2007	Results of vote in Parliament		
24/05/2007	Parliament's amendments rejected by Council		Summary
05/06/2007	Formal meeting of Conciliation Committee		
31/07/2007	Final decision by Conciliation Committee		
31/07/2007	Joint text approved by Conciliation Committee co-chairs	03635/2007	
11/09/2007	Report tabled for plenary, 3rd reading	A6-0314/2007	
24/09/2007	Debate in Parliament		
25/09/2007	Decision by Parliament, 3rd reading	T6-0401/2007	Summary
25/09/2007	Results of vote in Parliament		
26/09/2007	Decision by Council, 3rd reading		
23/10/2007	Final act signed		

23/10/2007	End of procedure in Parliament		
03/12/2007	Final act published in Official Journal		

Technical information

Procedure reference	2004/0047(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2001/14/EC 1998/0267(COD)
Legal basis	EC Treaty (after Amsterdam) EC 071
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/45216

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A6-0143/2005	30/05/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0354/2005 OJ C 227 21.09.2006, p. 0086-0460 E	28/09/2005	Summary
Committee draft report		PE376.755	17/10/2006	
Amendments tabled in committee		PE382.291	01/12/2006	
Committee recommendation tabled for plenary, 2nd reading		A6-0475/2006	21/12/2006	
Text adopted by Parliament, 2nd reading		T6-0003/2007	18/01/2007	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A6-0314/2007	11/09/2007	
Text adopted by Parliament, 3rd reading		T6-0401/2007	25/09/2007	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	05895/2/2006 OJ C 289 28.11.2006, p. 0030-0041 E	24/07/2006	Summary
Draft final act	03635/2007/LEX	24/10/2007	

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2004)0139	03/03/2004	Summary
Document attached to the procedure	COM(2004)0140	03/03/2004	Summary
Document attached to the procedure	SEC(2004)0236	03/03/2004	Summary
Commission response to text adopted in plenary	SP(2005)4139	20/10/2005	
Commission communication on Council's position	COM(2006)0516	18/09/2006	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2007)0078	22/02/2007	Summary
Follow-up document	COM(2013)0034	30/01/2013	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0161/2004 OJ C 071 22.03.2005, p. 0026-0029	17/11/2004	
EESC	Economic and Social Committee: opinion, report	CES0130/2005 OJ C 221 08.09.2005, p. 0056-0061	09/02/2005	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	03635/2007	31/07/2007	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2007/0058
OJ L 315 03.12.2007, p. 0044 Summary

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

2004/0047(COD) - 30/01/2013 - Follow-up document

Directive 2007/58/EC the Commission presents a report on the implementation of the provisions regarding the opening of the international rail passenger transport market accompanying the Communication on the fourth Railway Package.

Transposition: although all Member States were delayed as regards transposition (the deadline was 4 June 2009), by now all of them have taken national legislative measures to comply with the Directive. International rail passenger services including cabotage rights have been liberalised in the EU as from 1 January 2010.

Implementation: the interpretation of Article 10 (3a) and the provisions concerning the principal purpose of a rail service and the economic equilibrium of services under a public service contract being compromised proved to be the most difficult for Member States. In this field, the Commission adopted an interpretive Communication and will adopt implementing acts on the basis of the Directive establishing a Single European Railway Area.

Limitation of cabotage rights: several Member States decided not to use any of the options provided by the Directive to limit new international services or cabotage rights. Even where national law grants the possibility of limiting cabotage, practical application of those provisions remains minimal. Concession-based limitation seems to be the most efficient of the safeguard clauses to protect the interests of operators providing services on a route that may be interesting for cabotage. However, this used only by the Netherlands.

Development of the service: the report shows that the implementation of the Directive resulted in very few new services launched so far and makes an attempt to analyse the reasons for that. It notes that when trying to enter the international rail passenger market, new operators are often facing barriers linked to inadequate implementation

of previous railway packages or loopholes in previous EU legislation. Infringement procedures, the recast of the First Railway Package and the proposals for the Fourth Railway Package are expected to contribute to the solution of these problems.

The report goes on to note that in any event, most segments of the international rail passenger market are barely profitable and therefore unattractive for operators. The experience from opening the rail freight market shows that new operators (even subsidiaries of incumbent railway undertakings in other Member States) **prefer domestic services to international ones** as traffic flows are larger and domestic traffic is easier to organise. The Commission's proposals to open up domestic rail passenger markets and to expand competitive tendering in the framework of the **Fourth Railway Package** (see 2013/0028(COD) and 2013/0029(COD)) should give a boost to the development of international services. The analysis of the experience gained from the opening of the international rail passenger market since 2010 seems to confirm that new international services are likely to spread from domestic market opening rather than the other way round.

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

2004/0047(COD) - 22/02/2007 - Commission opinion on Parliament's position at 2nd reading

The Commission can accept in their entirety or partly most of the amendments adopted by the European Parliament in second reading. The agreed amendments aim to clarify the proposal made by the Commission, introduce additional reporting requirements and modify certain comitology provisions based on Council Decision 2006 /512/EC of 17 July 2006 amending Council Decision 1999/468/EC.

Other amendments accepted concern:

Levy to finance public services: these amendments clarify the scope of such a levy and the conditions of raising it.

Length of framework agreements: this amendment introduces a recital on the proposed provision in the Directive to extend the standard duration of framework agreements in the case of specialised infrastructure and substantial long term investment to 15 years.

Reporting requirements: these amendments modify the reporting requirements of the Commission. **Impact assessment of the directive in small countries of the EU**: two other amendments suggest focussing the 2012 report on the state of preparation for the opening of the market for national passenger services and require another report in 2018 on the application of the compromising economic viability test of public services through cabotage as well as of the reciprocity clause. The Commission can agree on assessing in 2012 the state of preparation for the opening of the market for national passenger services. However, it considers that the two assessment items proposed for the report in 2018 should be advanced to the 2012 report. The two amendments require redrafting as the reference to domestic rail passenger market opening is not relevant anymore due to the fact that it has not been voted by the Plenary.

Comitology procedure: these amendments align the comitology provisions of Directive 91/440/EEC as amended by this Directive to Council Decision 2006/512/EC of 17 July 2006.

On the other hand, the Commission rejects the amendment which deletes recital 8. The Commission considers the enumeration in recital 8 of criteria and procedural aspects for the assessment of whether the principal purpose of a cabotage service is international transport as important for the transparency of the procedure. The Commission cannot agree to a certain amendment as it does not make sense to grant new Member States the right to postpone opening of national rail passenger markets by 5 years if this Directive does not open domestic rail passenger markets at all.

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

2004/0047(COD) - 23/10/2007 - Final act

PURPOSE: to follow up the reform of the rail sector by opening up international rail passenger services within the European Union to competition (third rail package).

LEGISLATIVE ACT: Directive 2007/58/EC of the European Parliament and of the Council amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

CONTENT: the Council adopted the three legislative proposals composing the third rail package, namely:

- this Directive on the development of the Community's railways;
- a directive on the certification of onboard personnel ensuring the operation of locomotives and trains (see COD/2004/0048);
- a regulation on rail passengers' rights and obligations (COD/2004/0049).

The three legal acts were adopted pursuant to the joint draft texts agreed by the Council and the European Parliament through an exchange of letters on 20 and 21 June 2007, in the framework of the conciliation procedure.

The Directive on access to rail services allows the opening up of international rail passenger services by 2010 and includes the right for international trains to provide cabotage services, namely the right to pick up and set down passengers at any station located along the route of an international service, including stations located in the same Member State.

So that the opening up of international rail passenger services does not lead to the opening up of the market for domestic passenger services, the Directive states that the right of access only applies to international services, whose principal purpose is the transport of passengers between stations in different Member States. Member States may exclude from the scope of this Directive any railway service carried out in transit through the Community and which begins and ends outside the Community territory.

The Directive is a fair balance between the opening up of the market, on the one hand, and the protection of public transport services, on the other. To reach this balance, the text provides for:

- a procedure which makes it possible to determine whether the opening-up of the market for international rail passenger services compromises the economic equilibrium of public transport services;
- a clarification of the rules for granting the right of access; and
- a rule enabling Member States to impose a levy on international rail passenger services. In line with the expectation of the European Parliament, the rules governing the levy on international rail passenger services, aiming to finance public transport services, specify that the total revenue raised from such a levy shall not endanger the economic viability of the rail passenger transport service on which it is imposed, and that the compensation paid may not exceed the total cost incurred in the relevant public service obligations.

Member States may also limit the right to pick up and set down passengers at stations within the same Member State on the route of an international passenger service where an exclusive right to convey passengers between those stations has been granted, under a concession contract awarded before 4 December 2007, on the basis of a fair competitive tendering process. This limitation may continue for the original duration of the contract, or 15 years, whichever is the shorter.

Concerning the committee procedure, the Directive allows measures necessary for the adaptation of the Annexes of Directive 91/440/EEC and Directive 2001/14/EC to be adopted in accordance with the "regulatory procedure with scrutiny".

In 2012, the Commission will present a report on the application of the Directive, which will evaluate the development of the market, including the degree of preparation of a further opening up of passenger rail services. It shall also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In this report, the Commission shall, if appropriate, propose complementary measures to facilitate any such opening and assess their impact.

ENTRY INTO FORCE: 04/12/2007.

TRANSPOSITION: 04/06/2009.

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

2004/0047(COD) - 24/05/2007

The Council decided not to accept all the European Parliament's second reading amendments to three legislative proposals, which form a so-called third railway package:

- proposal for a directive amending Council directive 91/440/EEC on the development of the Community's railways;

- proposal for a directive on the certification of train crews operating locomotives and trains on the Community's railway network;

- proposal for a regulation on international rail passengers' rights and obligations.

It accordingly decided to convene the Parliament-Council conciliation committee with a view to negotiating a joint text.

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

2004/0047(COD) - 25/09/2007 - Text adopted by Parliament, 3rd reading

The European Parliament adopted a resolution on the joint text approved by the Conciliation Committee regarding the proposal amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure. It approved the joint text by 541 votes in favour to 66 against with 20 abstentions.

The key points of the agreement reached can be summarised as follows:

- **Comitology**: measures necessary to adapt the annexes of Directive 91/440/EEC and Directive 2001/14/EC will be adopted in accordance with the 'regulatory with scrutiny' procedure;
- **Levy**: in line with the EP second reading position, provisions governing the levy on international rail passenger services to finance public rail passenger services include the stipulation that 'the total levies imposed shall not endanger the economic viability of the rail passenger service on which they are imposed'; and that the compensation paid shall not exceed the total cost incurred in discharging the relevant public service obligations.
- **Reporting obligations**: the Parliament achieved its goal of ensuring that, when the Commission reports in 2012 on the implementation of the Directive, it will also be obliged to assess the development of the market including the state of preparation for a further opening-up of the rail market and, if appropriate, propose additional measures to bring about further liberalisation of rail market access.

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

2004/0047(COD) - 03/03/2004 - Document attached to the procedure

The European Commission presents a communication on the further integration of the European rail system: third railway package. The introduction of the new European regulatory framework for rail transport is progressing in line with the reform objectives set out in the White Paper European transport policy for 2010: Time to decide. These objectives place the revitalisation of the rail sector at the heart of the sustainable mobility strategy and, to this end, seek to improve the attractiveness and competitiveness of more environmentally friendly modes of transport. They also seek to put customers, and in particular passengers, at the centre of a high-quality transport system. In its Communication introducing the second railway package, the Commission put forward an implementation schedule for the measures set out in the White Paper for the phase following the second railway package. This document discusses the current status of the measures proposed in that package. The implementation of the measures is now set to continue by means of four new proposals: -a proposal for a Directive on the certification of locomotive and train drivers engaged in the carriage of passengers and goods in the Community. To enable train drivers to operate in the future integrated European railway area, it is important that action be taken now to set up a certification system which fully recognises the specific skills needed to drive a train and at the same time facilitates driver movement and mobility. The certification system thus needs to be based on a clear and logical distinction between two levels. Firstly, general knowledge, which is comparable to basic training, acquired by each individual. This general knowledge does not relate to a specific infrastructure or a particular network. It needs to be recognised and to be valid throughout the Community. Its recognition needs to be authenticated by a licence granted to the individual driver. Secondly, specific knowledge, relating to a specific route. This needs to encompass line knowledge, the rolling stock and the operating procedures of the particular railway undertaking. Accordingly, recognition of this knowledge must necessarily be restricted to a specific context. The Community instrument proposed observes these simple principles, in that it provides for a single document valid throughout the Community for the first level, and a series of certificates for the second. To be able to operate, drivers will therefore need to be in possession of a licence and a certificate (or several certificates) relating to the railway undertaking which employs them, the line they will be working on and the rolling stock they will be operating. - a proposal for a Regulation on international rail passengers' rights. Access to information and fares, and the option of buying international rail tickets easily, are the very least that is needed to make rail services attractive. In addition, a framework is required for liability in the event of accidents or incidents during a journey or in the event of delay. The principle of compensation also needs to be acknowledged, andthresholds set for the amount of compensation depending on the type of journey. The various channels for making appeals and handling complaints need to be clearly identified so as to facilitate passenger transactions. Lastly, account needs to be taken of the particular needs of people with reduced mobility. These arrangements to protect passengers' rights will be all the more vital once the market is opened up for certain services. The combination of an open market and a rigorous framework of passengers' rights should generate a positive dynamic in which international rail services improve in quality and become more attractive compared with competing modes, notably air travel, which has its own increasingly detailed framework to protect passengers' rights. - a proposal for a Directive on opening up the market for rail passenger transport services. There are two models for opening up to competition. Firstly, a competitive procedure can be used to award a public service contract, accompanied, if necessary, by exclusive rights for a certain period and, where appropriate, by compensation for the public service. This model works well for suburban and regional services. It underpins the Commission's proposal to modernise Regulation No 1191/69 on public service obligations. The other model consists, as for rail freight, in opening up access to the infrastructure for operators wishing to provide services. It should be noted that opening up access rights is not in itself sufficient to create a situation of genuine competition right away. Before operating, potential competitors will need to have: - rolling stock and drivers authorised to move through the Member States in which they plan to operate; - a railway undertaking licence in a Member State; - a safety certificate issued by the national safety authority of each Member State; - infrastructure capacity. This second model, based on free access to the infrastructure, is better suited to long distance services and to specific services where a commercial innovation is likely to attract new customers (e.g. occasional trains, car trains). The high-speed trans-European network, which will be linked up by 2010, could also provide scope for the appearance of new competing services. That is why the proposal now being put forward is designed to take account of the diversity of markets segments by providing a clear and simple link between the area covered by public service contracts (within the meaning of Regulation No 1191/69) and the area open to new initiatives. Under the proposal, all

international services would be opened up to competition on 1 January 2010, except for services operating between two specific locations under a public service contract. - a proposal for a Regulation on the quality of rail freight services. The Commission proposes a common base which will apply by default if the railway undertaking and its customer fail to introduce a specific system to improve quality. To that end, the proposal establishes mandatory minimum clauses for transport contracts, failure to include which will make the latter null and void. These clauses include arequirement for the parties to provide for a system of compensation in the event of freight being delayed or damaged. In addition, the directive introduces minimum ceilings for compensation in the event of delay: the parties have to set the amount by mutual agreement in the transport contract, but in order to provide a reasonable economic incentive the compensation may not be less than 5% of the cost of the transport. The Commission believes this proposal will act as a strong incentive for railway undertakings and their customers to take a contractual approach to quality management.

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

2004/0047(COD) - 01/12/2005

The Council reached political agreement on the rail market access proposal, which aims at ensuring market access for international rail passenger services. This proposal is part of the Third Railway Package, which the Commission presented in March 2004 with a view to making rail transport more competitive and more attractive.

The rail market access proposal provides for the opening of the market for international rail passenger transport in 2010 and includes the right for international trains to perform cabotage. In the political agreement, the Council struck a balance between opening of the market on the one hand, and safeguarding public services on the other hand. Furthermore, the Council took note of a progress report on the public service obligations proposal.

In reaching a political agreement on the rail market access proposal, the Council and the Commission presented a statement in which it was agreed that opening the railway market in the Community could be achieved only step by step, and that this must be done in conformity with the demands of a public service. The Council will therefore try to reach political agreement on the public service obligations proposal as soon as possible in 2006.

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

2004/0047(COD) - 18/01/2007 - Text adopted by Parliament, 2nd reading

The European Parliament voted on the "third rail package" - three separate reports on opening up rail networks to competition **(COD/2004/0047),** minimum rights for passengers **(COD/2004/0049)** and a European licence for train drivers **(COD/2004/0048.).** Wide differences remain between Parliament and the Council, and this legislation is now expected to go to conciliation.

In this report on the development of the railways by Georg **Jarzembowski** (EPP-ED, DE), it should be noted that the Transport Committee had called for domestic railways to be opened up to competition by 2017. (Please see the summary dated 19/12/2006.) However, this position did not receive sufficient support in the vote in plenary and therefore no liberalisation can be expected on this front in the foreseeable future. Regarding competition in international railways, Parliament voted to accept the date of 2010 contained in the Council's common position.

Other main amendments were as follows:

-Parliament was **opposed to the Council's further limitation on the opening-up of networks**, under which new, open-access international services with intermediate stops could not be used to pick up and set down passengers in the same Member State. Parliament therefore rejected the provisions in the common position specifying that the right of access would be granted only to those international services whose principal purpose is to carry passengers between stations located in different Member States;

- Member States may authorise an authority responsible for rail transport to impose a **levy on railway undertakings** providing an international passenger service for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State. In that case, railway undertakings providing a domestic transport service shall be subject to the same levy on the operation of those routes. The levy is intended to compensate the authority for discharging public service obligations in the context of a public service contract. The total levies imposed shall not endanger the economic viability of the international passenger service on which they are imposed;

-the proposed levy that Member States could raise on passenger services in their territory, to help finance public service obligations, should be imposed in accordance with the principles of "fairness, transparency, non-discrimination and proportionality";

-in order to create specialised infrastructure, such as high-speed railway lines, railway undertakings require planning and legal certainty commensurate with the substantial long-term investment involved. It should therefore be possible for such undertakings normally to conclude framework agreements with a term of up to 15 years. Directive 2001/14/EC should be amended accordingly;

-the application of the directive should be evaluated on the basis of two reports, to be submitted by 31 December 2012 and 1 January 2018 respectively, rather than just one as originally proposed. In the first report, the Commission should specifically analyse the state of preparation for the opening of the market for national passenger services and, possibly, proposing flanking measures to facilitate this step.

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

2004/0047(COD) - 24/07/2006 - Council position

The Council has included eight amendments made by the European Parliament, either literally or in principle, in its common position. A central issue of the Council's discussions on the market opening proposal was its relation with the revised proposal on public passenger transport services by rail and by road. Consequently, at a Council meeting of 5 December 2005, a Political Agreement on the Rail Market Access proposal could only be reached by addressing the relation between both proposals and giving guidance to several elements of the Public passenger transport services proposal in a Statement to the minutes made by the Council and the Commission.

The Council, by qualified majority (abstention by Hungary), made some changes to the proposal:

- **opening the market for international rail passenger services:** by agreeing to grant, by 1 January 2010, the right of access to the infrastructure of all Member States to railway undertakings for the purpose of operating international passenger services, the Council follows the compromise reached with Parliament at the time of the conciliation procedure on the Second Railway Package. However, the Council wants to leave Member States more time to prepare for market opening, by allowing them to grant the right of access by 1 January 2012 at the latest. Consequently, the Council does not agree with Parliament's view to open international rail passenger services by 2008, and all other forms of rail passenger services by 2012. The Council, however, took over the Parliament’s proposal of a reciprocity clause that Member States could apply which would open their market before 2010;

- **right to pick up and set down passengers in the same Member State:** the Council wants to avoid a situation where a right of access for international rail passenger services, which include cabotage, leads to the opening of the market for domestic rail passenger services. Therefore, the Common Position allows granting the right of access only to those international services, which have as a "principal purpose" the carriage of passengers between stations located in different Member States. In the Common Position, a procedure is foreseen for determining the purpose of international service for which access is requested;

- **safeguarding public transport services:** the Council has added three elements to the Commission proposal: a procedure for determining whether opening the market for international rail passenger services compromises a public transport service; a clarification on the modalities for granting the right of access; and a provision which allows Member States to charge a levy on international rail passenger services. With regard to the procedure, an important element is an objective economic analysis undertaken by the regulatory body of the impact of the international rail passenger service on public transport services. The Council has taken this idea from a Parliamentary amendment;

- **framework agreements:** like Parliament, the Council feels it necessary to complement the opening of the market for international rail passenger services with arrangements for a more stable and predictable climate for investments in the infrastructure for these services, and in particular for services using specialised infrastructure. Consequently, the Council modifies the provisions with regard to framework agreements in Directive 2001/14 /EC. Where the Parliament proposes to allow for services using specialised infrastructure, which require substantial and long-term investment framework agreements with a duration of 10 years, the Council is of the opinion that a 15 years' duration is more appropriate;

- **transit:** the Common Position clarifies that the transport services of goods and passengers, which begin and end in third countries and which transit Community territory, are not included within the scope of the proposal. Lithuania made a Statement in the minutes on the issue of transit;

- concession based system: the Council is in favour of allowing Member States, for a transitory period, not to provide full open access to international rail passenger services in cases where the right to use certain rail routes has already involved a sufficient test of market value through the principle of competition for the rails.

- exemption from implementation for Malta/Cyprus: taking into account the fact that Malta and Cyprus do not have a railway system, and that the prospects of them having one are very limited, the Council exempts these two Member States from the obligation to implement the Rail Market Access Directive.

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

2004/0047(COD) - 03/03/2004 - Legislative proposal

PURPOSE: continuation of the reform of the rail sector by opening the international transport of passengers within the European Union to competition (Third Railway Package). PROPOSED ACT: European Parliament and Council Directive. CONTENT: As announced in the White Paper 'European transport policy for 2010: time to decide', the Commission is presenting a proposal with a view to opening up international rail passenger services to competition. This is one of several measures being proposed to complement the First Rail Package (2001) and the Second Rail Package, which is to be formally adopted in the near future (directive on rail safety, the Rail Agency and the opening of the freight market). Along with this current proposal on the opening of the market, the Commission is also proposing to improve the rights of passengers using international services (COD/2004/0049), establish a certification system for locomotive drivers (COD/2004/0048) and step up the quality of freight services (COD/2004/0050). This particular proposal provides that as from 1 January 2010, railway undertakings, which have a licence and the required safety certificates, should be able to operate international services in the Community. In order to create realistic economic conditions to develop the services, it is proposed that operators be permitted to pick up and set down passengers at any station on an international route, including stations located in the same Member State. This has been organised in such a way as to safeguard the economic equilibrium of public service contracts which could be affected by this, while at the

same time not placing exaggerated constraints on the operating conditions of new international operators. In view of differing needs of the various market segments (regional cross-border, international long distance, high-speed, etc.) and on the profitability or otherwise of the service in question, it was proposed that the general principle should be one of opening up the market on the basis of free access, while allowing Member States the option of limiting such access if they conclude a public service contract for a specific service or if the economic equilibrium of the public service is at risk.

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

2004/0047(COD) - 03/03/2004 - Document attached to the procedure

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:**Openingof 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.

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

2004/0047(COD) - 18/09/2006 - Commission communication on Council's position

The Commission considers that the Common Position does not undermine the essential objectives and the underlying approach of its proposal, and can therefore support it. It makes the following comments on the principal points:

- on the **rights to openly access the infrastructure for rail passenger services,** the Commission supports the opening schedule as defined in the Common Position as it allows all market actors to prepare for market opening. The Commission can accept the reciprocity clause since it is strictly transitional in nature and formulated in such a way as to avoid incompatibility with Community law. The Commission also agrees with the Common Position that the right of access should only be granted to those international services, which have as a principal purpose the carriage of passengers between stations located in different Member States. In this manner, an access right for international passenger services, which includes cabotage, could not be abused and lead to the opening of the market for domestic passenger services;

- on **the mechanisms and procedures to safeguard public transport services**, the

Commission agrees with the three additional elements as they either enhance the clarity of the provisions or state what is possible under Community law anyway;

- the Commission comments on Parliament's proposal, taken up by Council, to complement the opening of the market for international rail passenger services, and in particular for services using specialised infrastructure, **with arrangements for more stable and predictable climate for investments**. The Commission supports the position of the Council which reflects appropriately the generally long amortisation periods for such specialised rail infrastructure.

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

2004/0047(COD) - 06/10/2005

The Commission informed the Council of the current state of play in its informal contacts with the United States Administration, following which a number of delegations intervened.

The President summarised the results of the exchange of views as follows:

"The Council welcomed the progress reported by the Commission in its informal talks with the United States. Whilst recognising that there could be no guarantee of success, Ministers were unanimous in their support for a prompt resumption of formal negotiations, judging that conditions were now in place for making progress towards an agreement with the US at substantial mutual benefit. Such an agreement could be staged, provided there was a commitment to completion, and would need to deliver real benefits for both sides. The Commission had the Council's full support and the Presidency would work closely and urgently with the Commission to achieve a result."

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

2004/0047(COD) - 28/09/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Georg **JARZEMBOWSKI** (EPP-ED, DE) amending the Commission's proposal. (Please see the summary of 19/04/2005.) Parliament called for the complete opening of rail services to competition from 2012, rejected the European Commission's proposal on the quality of rail freight services, and significantly extended the scope of the proposal on passengers' rights. These are the most notable provisions in reports on the third European rail package. (The package consists of four legislative proposals. Please see COD20040048, and COD20040049.)

Parliament decided not to block the decision-making process, having secured guarantees from the British Presidency that the EU Council of Ministers will consider the package as a whole. Parliament had considered not adopting a resolution, since it was concerned at the package was being broken up by the Council as a means of burying the Directive on the liberalisation of passenger services.

This resolution provides for the liberalisation of international passenger transport from January 1, 2008 at the latest, and the liberalisation of domestic passenger services from January 1, 2012. This is more ambitious than the Commission's proposal which called for the opening of international passenger transport to competition by 2010. In addition:

-Member States should remain free to anticipate the grant of access rights to railway undertakings and international groupings for national and international passenger transport services. The use of such rights may temporarily be confined to railway undertakings, and their directly and indirectly controlled subsidiaries, that hold a licence in the Member States where analogous conditions for access to the railway infrastructure apply. This reciprocal clause would prevent rail enterprises that continue to operate as monopolies in their own country from benefiting from open markets in other member states.

-In order to create specialised infrastructure, such as high-speed railway lines, railway undertakings require planning and legal certainty commensurate with the substantial long-term investment involved. It should therefore be possible for such undertakings normally to conclude framework agreements with a term of 10 years. Directive 2001/14/EC must be amended accordingly. Framework agreements will in principle be of aduration of five years and shall be renewable for periods equal to their original duration. The infrastructure manager may agree to a shorter or longer period in specific cases. Periods longer than five years must be justified by reference to the existence of commercial contracts, specialised investments or risks. For services using specialised infrastructure and which require substantial and long-term investment, framework agreements may be of 10 years' duration. Any period longer than 10 years shall be permissible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan

-The application of the Directive will be evaluated on the basis of two reports to be presented by the Commission two years after the dates of opening up the market in international and national passenger services, respectively. These reports will include first evaluations by the Commission of the impact of the first and second railway packages on public service quality standards, social standards of employees and environmental performance. Furthermore the Commission must present an impact assessment on the opening of the networks for national passenger services by 31 December 2005.