



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 May 2006

8834/06

TRANS 104

COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 May 2006

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Report from the Commission to the European Parliament, the Council, the
European Economic and Social Committee and the Committee of the Regions
on the implementation of the first railway package

Delegations will find attached Commission document COM(2006) 189 final.

Encl.: COM(2006) 189 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.5.2006
COM(2006) 189 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

on the implementation of the first railway package

{SEC(2006) 530}

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1. INTRODUCTION: FROM THE FIRST TO THE THIRD RAILWAY PACKAGE, THE GRADUAL CREATION OF A EUROPEAN RAILWAY AREA

The railways were the first of the modern modes of transport. Their success during the 19th century and the first half of the 20th century was unprecedented, but they fell into decline as motor cars and commercial aviation became increasingly popular and successful. In order to halt this decline the European Community has adopted a number of legislative measures aimed at reviving the railways by gradually creating a “railway area” which is integrated at a European level. However, the slow rate at which the Member States and their national undertakings have adapted to the European dimension means that the railway sector has declined further in most of the Member States except those which were aware of the need for proactive and courageous measures. The first Member States to reform their national railway industry are today also the ones which perform best (in terms of traffic in particular) and have modernised to a degree which augurs well for the future.

In 1996¹, the White Paper on the railways highlighted the need to reform the sector more fully to give it a chance of success in the European internal market. The **first railway package** presented by the Commission in 1998 focused on the shortcomings of Directive 91/440/EEC² and was based on the consensus reached by the decision-makers following their analysis of the 1996 White Paper. Comprising three Directives, it enables any railway undertaking which has been licensed in accordance with Community criteria to have access to railway infrastructure on fair, non-discriminatory terms to offer pan-European services, starting with international freight services on the trans-European rail freight network. Its adoption at the end of 2000, following a difficult conciliation procedure between the European Parliament and the Council, and publication on 15 March 2001 for transposition in the Member States by 15 March 2003 signalled the desire of both national and European policymakers to overhaul the regulatory framework for the industry from top to bottom to ensure its integration into the European area and to enable it to face up to the competition from other transport modes on the best possible terms.

The September 2001 White Paper on European transport policy, which was based on the decisions set out in the first railway package, clearly advocated continuing with the creation of a European railway area, which the **second railway package** proposed by the Commission in January 2002, and adopted in April 2004, defined in greater detail with more extensive opening up of the freight market, a Directive on railway safety, a Regulation establishing a European Railway Agency and other measures to speed up interoperability between the national networks. The adoption of this package, which includes the total opening up of the freight market as from 2007 in a European Union by then of 25 or even 27 Member States, was evidence of the same wish on the part of the decision-makers to continue with the creation of a European railway area. Even more indicative of this desire was the demand of the European Parliament to have a **third railway package** on the table before approving the second package, which led the Commission to put forward new proposals in March 2004, this time aimed at opening up the international passenger transport market by 2010, the certification of on-board staff and passenger rights. The European Parliament endorsed these proposals in September 2005 and political agreement was reached in the Council on

¹ White Paper - A strategy for revitalising the Community's railways - COM(96) 421, 30.7.1996.

² The full references for the Community railways legislation are given in Annex 1 (i.e. Annex 1 to the working document).

5 December 2005, making it likely that agreement, albeit difficult to achieve, will be reached on the package during the first few months of 2007. It will then be possible to say that the European regulatory framework for the railway sector is complete, though this does not rule out the possibility of adjustments being made in future to some of the provisions which have already been adopted in the light of any difficulties which arise during the transposition in the Member States.

This report by the Commission is concerned solely with the implementation of the first railway package, which applies in full at the present time, and its impact on the stakeholders concerned and the market, bearing in mind that the aim of creating a genuine European railway area over time is because this is the only way of revitalising the sector as part of the European transport system and this is a necessary contribution to the Lisbon Strategy. Developing today the competitiveness of the sector through market opening means supporting future investment, and thereby ensuring the growth and employment which the Lisbon Strategy aims at. In addition, by contributing to the development of environmentally friendly transport, the Community deliberately opts for the development of sustainable transport.

This report is based on the information available to the Commission, the discussions held with the Member States within various specialised committees and working parties and a number of studies which can be found on the Commission's website. Furthermore, the European stakeholders concerned and their representative organisations have expressed comments on the present situation. These are summarised in Annex 3 to the working document.

2. TRANSPOSITION PERFORMED BY THE MEMBER STATES BUT CONSOLIDATION STILL NEEDED

The first railway package consists of three Directives of the European Parliament and the Council (2001/12/EC, 2001/13/EC and 2001/14/EC), which are closely interlinked and which were due to be transposed by the 15 Member States no later than 15 March 2003 and by the 8 new Member States which have a railway system by 1 May 2004, the date of their accession to the European Union. The Commission has examined the main aspects of the reform for which it provides an overall evaluation of the transposition situation, the details being given in the Annex:

- The **separation of accounts** for activities relating to the supply of transport services and activities relating to railway infrastructure management, with an additional distinction being made, inter alia, in the case of the accounts for the supply of transport services, between those related to passenger transport and those concerning the transportation of goods (Annex 4). Cross-subsidisation between activities must be avoided. A large number of Member States have undertaken a thorough restructuring of their national railway undertakings. These reform processes have not been completed in all cases and the accounts do not yet reflect the new obligations. The 2005 accounts published in 2006 should correspond to the requirements of the Directives.
- **Separation between essential functions**, these being capacity allocation, charging, licensing and the monitoring of public service obligations as regards transport activities (Annexes 5 and 6): the Commission will examine, on the basis of clear and transparent criteria, whether the infrastructure manager acts neutrally in allocating capacity and charging for infrastructure use, in particular where the separation of functions is not guaranteed by means of institutional separation. Access to (rail and services) infrastructure

must be transparent and non-discriminatory, and work still remains to be done in this area in many of the Member States.

- An **independent regulatory body** is essential to monitor the railway market and to act as an agency to settle disputes between the infrastructure operator and the railway undertaking(s) (Annex 7). This body must have human, financial and administrative resources on a sufficient scale to enable it to play an active part in the operation of the market, which is not the case everywhere.
- **The granting of infrastructure access rights**, including access rights to the necessary services, on a fair and non-discriminatory basis to all railway undertakings which wish to offer international freight services on the trans-European rail freight network as from 15 March 2003 (Annexes 2 and 8). The Commission encourages the gradual introduction of standard contracts between the infrastructure manager and the railway undertaking(s) (use contracts and framework contracts) to facilitate access. Enabling authorised candidates (e.g. freight forwarders, and the competent authorities for public transport service contracts) to have access to infrastructure is a regulatory option for Member States which see a need to provide rail customers with an additional way of obtaining a better transport service.
- **The introduction of a charging system** based on the marginal cost principle with increases being possible under certain circumstances (Annex 8). It is essential that distortions of competition due to differences in charging levels between transport modes and within the railway industry itself are corrected. To attain the objectives of the first railway package, it is important to avoid cross-funding between freight trains and passenger trains through the infrastructure charging system.
- **Harmonised conditions for the granting of licences for railway undertakings** which are valid throughout the Community (Annex 9). While the costs and periods of time involved in obtaining these licences may vary from one Member States to another, greater transparency regarding the conditions to be met by railway undertakings to obtain a licence is needed.

On 1 January 2006, 24 out of 25 Member States had formally transposed the Directives of the first railway package into their national legislation. Luxemburg has formally committed to implement it during the first half of this year. Details regarding transposition and the national measures are given in Annex 1 to the working document. The delays in transposition which prompted the Commission to launch infringement procedures for failure to transmit the national implementing measures have had repercussions on the ability of the actors to assert themselves on the European stage due to the resulting uncertainty surrounding the national regulatory situation. At the moment, the Directives are still having an unequal effect in practice from one Member State to another, and have not led to the arrival of new entrants in all the Member States. Where appropriate, the Commission will launch infringement procedures if transposition is incomplete or has not been done properly: it is in fact necessary to ensure that the implementation is done in the spirit of Community legislation as well as to the letter.

3. THE DEVELOPMENT OF THE RAILWAY MARKET AND ITS PLACE IN THE TRANSPORT SYSTEM

3.1. The market for the transportation of goods by rail

The main focus of the reform going on in the Community has been rail freight, the constant decline of which was considered to be unjustified given the intrinsic advantages offered by the Community rail transport area, namely a substantial increase in transport distances and an increase in the exchange of goods within the European area, given that road transport has reached saturation point, in particular in the Alps and the Pyrenees. The first measures taken regarding the opening up of the market therefore concerned international freight services, and the success of these measures largely depends on the rate at which each Member State has opened up its market to this type of services. Some Member States had opened up their market before 15 March 2003, while others did not open their market until 2005. Details regarding the opening up of the market in the Member States are given in Annex 2. Despite the differences, the rail freight market has displayed new-found dynamism thanks in particular to the gradual opening up of the market as clearly set out in the first two railway packages and the impact of the restructuring of the incumbent undertakings.

When analysing the development of the EU market, account must be taken of the fact that the railways in EU-15 saw a substantial decline in their market share between 1970 and 2000 before the situation stabilised, and the new Member States saw a very sharp drop as from 1990 which is only now starting to bottom out. Consolidated figures for EU-25 have been drawn up as from 1995 and these show that the volume transported (expressed in tonne-kilometres) increased by 6% between 1995 and 2004, i.e. about 0.6% a year. However, the volume transported in 2002 was exactly the same as in 1995 and the increase of 6% is concentrated over the period 2003-2004, with 2004 showing an increase of 4% over 2003. With regard to market shares and for EU-25 as a whole, it is clear that the performance in terms of volume is not brilliant. Taking all transport modes together, including maritime transport, the share of the railways was 10% in 2004 as compared with 12.1% in 1995, while the figure for the roads increased during the same period from 42.1% to 44%, and that for the maritime sector from 38.2% to 39%. As regards the shares per transport mode for inland transport alone, the railways fell from 19.5% in 1995 to 16.4% in 2004, while the figure for roads increased from 68.1% to 72.3%, with inland waterways and pipelines falling slightly.

The railways' share of the freight market has been stabilising since 2001 in EU-25 and the best performance, disregarding the Baltic States which benefit from their very special geographical location and the kind of goods transported, can be seen in Member States which were first to start reforming their railway industry in anticipation of the Community Directives and the opening up of the market.

In terms of annual turnover, the rail freight market is currently evaluated at almost € 15 billion, with an estimated loss of € 800 million in 2004. The return is clearly inadequate because prices are dictated by competition from the roads, and the railways' production costs are still too high.

These figures are set out, together with a detailed analysis, in Annexes 10 and 11.

3.2. The market for the transportation of passengers by rail

This sector is presently not influenced by the Community measures aimed at opening up the market. Provided it is adopted, the third railway package should, according to the Commission's proposal, lead to the opening up of the market in international passenger services with cabotage in 2010. The considerable pace of development of high-speed services should certainly be noted. These now represent one-quarter of rail passenger traffic in EU-15, and this share is likely to grow further over the next ten years with the planned opening of numerous high-speed lines as part of the trans-European transport network in Italy, Spain, France and Germany, and the completion of the Paris-Brussels-Cologne-Amsterdam-London network.

For the evaluation of the first railway package which is the subject of this report, it should be stressed that the proper implementation of the provisions of both the first and the second packages is a *sine qua non* for the successful opening up of the market in international passenger services. The experience gained in managing the access of a number of different operators to the infrastructure will also benefit passenger transport as there will be an increase in the range of services provided. In terms of figures, rail passenger transport in EU-25 rose from 319 billion passenger-kilometres in 1995 to 350 billion in 2004, an increase of 10%, or about 1% a year, as compared with an annual increase of 2% for the roads and 5% for aviation. The modal share of the railways fell from 6.3% to 5.9% during the same period. This drop is in fact due to the much steeper decline in traffic in the new Member States where there is a new-found infatuation with private cars and a lack of investment in the railways. These figures are set out, together with a detailed analysis, in Annex 12.

4. THE DEVELOPMENT OF RAILWAY SAFETY

4.1. A very favourable situation

Safety is the hallmark of the railways. The public's intolerance of railway accidents, as compared with their relative tolerance of road accidents, is a key factor when analysing the industry.

Published statistics on railway accidents are still very patchy pending the full implementation of Community provisions on rail statistics and the safety of the railways. The establishment of common safety indicators, the creation of national safety agencies coordinated by the European Railway Agency and the production of regular reports by the Agency on how safety develops will in future provide a clearer overview of the situation with regard to the safety of the railways in the Community.

The figures available show that the number of passengers killed or injured in railway accidents is constantly falling while traffic continues to increase. The same trend can be seen for accidents at level crossings, which are the most common by far, more often than not due to the undisciplined behaviour of road users.

The opening up of the freight market has not had any impact on the safety of the railway system and the Member States which are currently most opened up to competition have not seen any deterioration in their safety levels.

The statistics are given, together with a detailed analysis, in Annex 13.

4.2. The question of safety certificates

The first railway package requires every railway undertaking to obtain a safety certificate for every Member State through which it wishes its trains to pass. The requirements for granting this certificate were not defined in any detail in Directives 2001/12/EC and 2001/14/EC, as a result of which each Member States has introduced its own procedures and requirements which are not particularly compatible with the harmonised approach which Directive 2004/49/EC on railway safety intended to establish with the support of the European Railway Agency. The present situation is described in a detailed study carried out by IVE³.

There are two major problems in this respect which should be mentioned:

- The problem of the **certification of rolling stock**, mainly traction units, which is the subject of long, arbitrary and costly procedures which are out of kilter with the requirement of creating an internal market in railway equipment. The Commission plans to resolve this problem, in particular as regards existing rolling stock which is recognised in one or more Member States but not in others. An approach to facilitate the mutual recognition of such equipment is being developed and will be presented to the industry and the safety authorities during the course of 2006.
- The problem of the **certification of staff**: the Directive on the certification of on-board staff is part of the third package which is still being negotiated between the European Parliament and the Council. Once it has been adopted and transposed, it will regulate issues which are currently in abeyance. However, the agreement reached by the social partners (Community of European Railways, CER, and European Transport Workers Federation, ETF) on 27 January 2004 on a European licence for train drivers working on cross-border routes is already making international operations easier. In general terms, fair and non-discriminatory access to training centres which are open to any applicant to become a train driver is still essential for the proper functioning of the railway market which is being developed. The European Railway Agency is in particular responsible for defining the terms of accreditation of these centres and therefore to facilitate their role as a service provider in the European railway area.

5. THE DEVELOPMENT OF WORKING CONDITIONS AND EMPLOYMENT IN THE RAILWAY SECTOR

5.1. The development of employment

The long decline in rail traffic and the restructuring of undertakings which followed have led to a sharp reduction in employment in the rail industry, with the number of jobs falling from 1.8 million in 1970 to about 770 000 in 2000 in EU-15 though the rate of decline has slowed down considerably in the last few years (760 000 in 2004). For EU-25, the number of jobs in the railway industry (national undertakings, new operators and infrastructure managers) therefore accounted for just under 1 200 000 jobs.

³ IVE Safety Certification Study: Acceptance Criteria & Assessment Methodologies for Safety Certificates Delivered in Accordance with Directive 2001/14/EC, Article 32, June 2005 (http://europa.eu.int/comm/transport/rail/research/studies_en.htm).

One effect of the ongoing regulatory reform has also been to distribute employment in a different way instead of being concentrated in a single overall entity as it used to be. The current statistics do not readily reflect all the effects of the reform and the dispersion of jobs.

The productivity of the railways can still be improved substantially in the new Member States and in a large number of the EU-15 Member States, but it seems that employment should be able to stabilise in the industry over the next few years, especially if traffic stabilises at the present level. The situation differs considerably from one Member State to another according to the degree of restructuring which has been achieved. The United Kingdom, Germany, Sweden, Italy, Spain and Estonia have already made enormous restructuring efforts. Other Member States, in particular some of the new Member States, still have a great deal of effort to make to improve their productivity.

More details are given in Annex 14.

5.2. Working conditions in the railway sector

Most employment in the railway sector is currently still concentrated within the incumbent undertakings, whether they are still integrated or organised along different lines. In general terms, employees in incumbents have preserved their status and have not seen any deterioration in their conditions of employment, even though restructuring has introduced greater flexibility. Most of the employees' trades unions believe that it is the process of opening up the market which is leading to this sometimes painful restructuring and do not accept the need for restructuring simply to ensure the survival of the railways.

The application of the agreement concluded by the CER and the ETF in January 2004 concerning certain aspects regarding the deployment of mobile workers performing cross-border interoperability services was made compulsory throughout the industry by Council Directive 2005/47/EC of 18 July 2005, in accordance with Article 139 of the Treaty. Minimum standards are therefore laid down with regard to working conditions, such as daily and weekly rest times, breaks and driving times. The working conditions which apply to the incumbents now generally apply to the new, competing rail freight companies, which have expressed some discontent with these requirements which, in their view, reduce the flexibility of their organisations. When the necessary requirements are met, the new railway companies will be able to play a full part in the European social dialogue during which these issues are discussed.

The sector is still being restructured, which could mean that sometimes there are negative consequences both for the staff in place and the attractiveness of the sector. For example, there seems to be a dangerous shortage of qualified staff. The incumbents have reduced the number of apprenticeships in an effort to reduce costs, while the qualifications required are not provided by vocational training. In the light of this, it will be necessary to develop training networks at European level for employment in the railway industry in order to create a genuine employment market for railway companies and infrastructure managers. In this way, it will be possible to increase productivity by modernising the organisation of work and investing in training while taking account of the quality of jobs, a key element in the Lisbon Strategy.

6. CONCLUSIONS: FURTHER WORK STILL NEEDED

The railway industry, which has been in permanent decline since 1970, has managed since 2001 to stabilise the volumes transported and, in some Member States, to recover market shares from the roads. The fall in employment has also been halted. The aim of the 2001 White Paper was to achieve the 1998 market share by 2010: this objective is still within the industry's reach if it continues to direct its efforts firmly towards internationalisation and endeavours continually to meet the needs of the economy and society. The distance we have come is already impressive. The changes which have been started must now be completed in order to put the finishing touches to a European railway area which will serve European mobility and competitiveness. The railway industry, which offers more advantages over long distances compared with road transport, will benefit from the increase in the size of the market which will cover the entire continent.

The Commission believes that the implementation of the first railway package by the Member States is well under way but that more needs to be done with regard to several aspects in order to ensure that its effects are complete. The Commission will ensure this by using all of its powers.

It believes that the **Member States** should direct their efforts towards:

- completing the restructuring of the incumbents while ensuring the separation of accounts and the separation of essential tasks such as the allocation of capacity and charging;
- the establishment of principles for rail infrastructure charging which take account of the way in which other transport modes are priced and forms part of a genuine transport strategy which will boost fair competition between modes and sustainable development;
- the creation of the administrative capability which is required for the proper operation of the regulatory body and the national safety authority, while ensuring that these bodies are genuinely independent;
- contractualisation of the State's financial relations with the infrastructure manager for the funding of maintenance and modernisation of the railway infrastructure, in the context of the establishment of a performance-based system;
- clarification of the financial ties between the national and regional transport authorities and the railway undertakings by concluding public service contracts which are duly published;
- the prohibition of cross-subsidisation between freight and passenger transport operations to maintain the ability of rail freight to be competitive;
- the creation of transparent requirements for access to training centres and safety certificates.

The Commission recommends that **infrastructure managers** pay attention to:

- improving the content and visibility of the network statement which must be clear and complete and cover all the services required for access to the infrastructure;
- setting charges based on the real costs engendered by rail traffic;

- cooperating at European level on the granting of international paths and establishing harmonised conditions for infrastructure access based on standard contracts.

The **incumbent railway undertakings**, whose long-term management must be ensured, should continue with their restructuring in order to adapt to the new European context while complying with competition rules.

In conformity with the transport policy which has been followed since the 2001 White Paper and its current evaluation, the Commission will continue to place rail at the centre of its transport policy. It will closely observe the market situation and will take all action necessary to correct undesired situations, starting infringement procedures or proposing amendments to existing Directives if they prove to have persistent shortcomings. In line with the commitment given by the Commission in 2005, guidelines on State aid in the railway sector are being prepared in order to increase transparency.