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COMMISSION STAFF WORKING DOCUMENT

SUMMARY OF THE IMPACT ASSESSMENT

Accompanying document to the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a single European railway area

(Recast)

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INTRODUCTION

The first railway package¹ is comprised of three Directives that include provisions that date back as far as 1991. Within the context of the Commission's programme for simplifying legislation², the proposed initiative to recast the first package will involve a process of codification of these Directives and their merging into one legislative instrument with a view to simplifying and consolidating.

From a substantial point of view, the objective is to insert into this single act new provisions to simplify, clarify and modernise the existing regulatory framework to address weaknesses, ambiguities and gaps identified and thereby to meet the initial objectives of the legislation.

1. PROBLEM DEFINITION

This report sets out the impacts of measures to be included in the recast of the first railway package, which have been formulated to address three key problems in the railway market:

- **Market access** remains difficult for new entrants. The number of new entrants in the rail freight market is still very limited and average operating costs for rail undertakings are high and increasing.
- The European rail market is still characterised by a high degree of **fragmentation** which compromises the functioning of the market and in particular affects railway undertakings.
- The **quality of infrastructure** continues to decline. This affects the performance of rail transport, due to reduced capacity and delays, discourages investment in ancillary services and new technologies and compromises rail's ability to compete credibly with other transport modes.

As a result, rail transport is still an unattractive option and competitiveness of the sector in relation to other modes, notably road transport, is diminished.

The Commission considers there are three dimensions to tackling these problems: existing legislation must be correctly implemented and enforced; existing legislative provisions may need to be clarified to ensure harmonised application across all Member States; and finally, new measures may be necessary to address specific issues.

¹ **Directive 2001/12/EC** of the European Parliament and of the Council of 26 February 2001 (OJ L 75, 15.3.2001, p. 1, as amended); **Directive 2001/13/EC** of the European Parliament and of the Council of 26 February 2001 (OJ L 75, 15.3.2001, p. 26, as amended); and **Directive 2001/14/EC** of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 75, 15.3.2001, p. 29, as amended).

² See COM(2005) 535 and COM(2006) 690: Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment.

2. DOES THE EU HAVE A RIGHT TO ACT?

Treaty base

In accordance with Title VI of the Treaty on the Functioning of the European Union (TFEU), the EU may take action in the area of transport. Article 90 of the TFEU establishes that objectives of the Treaties, which include establishing a common market and developing common policies to promote a high degree of competitiveness and the harmonious, balanced and sustainable development of economic activities, shall be pursued within the framework of a common transport policy.

Subsidiarity

Problems affecting the railway sector involve trans-national aspects requiring action at EU level. A lack of coordination between Member States and other actors reduces the efficiency of international rail transport, risking a shift from rail to road transport which would result in increased congestion and pollution. Clarification of the regulatory framework for rail market access in order to facilitate market entry and competition as well as to develop rail service markets can be better achieved by the Union than by Member States individually.

In accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union, the objective of revitalising Europe's railway sector will be better reached by complementing action already taken at EU level and by Member States by EU action to recast the first railway package.

3. OBJECTIVES

The **general objectives** of this initiative are to facilitate rail market entry and competition as well as to integrate the market, in order to develop efficient and high-performing rail freight and passenger transport services. The initiative should build on, complement and strengthen existing measures adopted at EU level.

Legal **simplification** through consolidation and merger is the first **horizontal objective** which underpins this recast initiative. Secondly, **clarification** of some provisions of rail access legislation would facilitate a proper transposition and efficient implementation of EU law in all Member States. Finally, there is a need to **modernise** the legislation by eliminating outdated provisions (historically relevant prior to full market-opening) and by introducing new provisions which respond more appropriately to the functioning of the market today.

The **specific objectives** of the initiative are to:

- Improve non-discriminatory access to service facilities
- Enhance transparency of the railway market's institutional framework
- Enhance co-operation and co-ordination to facilitate international rail transport
- Provide effective incentives for sound and sustainable financing
- Enhance regulatory body independence and competencies

4. POLICY OPTIONS

The package considered for the recast includes 26 modifications.

An impact assessment was deemed necessary for modifications which introduce 9 new measures. For 4 measures, a prior impact assessment had been conducted by the Commission thus only 5 measures were analysed. Considering the limited scope of the measures, the analysis has been conducted in qualitative terms in such a way as to allow a comparison of the effect of alternative policy options. Policy options for the 5 new measures and their impact are summarised below. Based on this analysis, one option was retained per measure.

The report also contains a quantitative assessment of economic, social and environmental impacts and administrative costs carried out on the whole package of modifications retained. These quantitative impacts are presented in Section 5.

4.1. Supply of rail-related services

The requirement that service facility management should be independent from rail transport provision will reduce conflicts of interest and discrimination in access to services, thus contributing to the business development of new entrants.

	Option 1	Option 2	Option 3
Supply of rail-related services	Service facility operators independent in legal terms from firms or entities which hold significant market power in railway transport market	Service facility operators independent in legal, organisational and decision-making terms from firms or entities which hold significant market power in railway transport market	Service facility operators independent in legal, organisational and decision-making terms from all firms or entities active in railway transport market

Under Option 1, conflicts of interest will still persist since independence is only legal and a service facility operator could be part of a holding company that also controls an incumbent railway undertaking.

Option 2 will ensure adequate independence and will have an impact on the development of rail-related services because access to rail-related services for new entrants will be easier and cheaper. Administrative costs are lower than under option 1.

Option 3 applies to all operators and is stricter and less effective than option 2. Investment in new service facilities would be less attractive since new entrant railway undertakings who have recently invested in and developed a service facility would be asked to sell the asset or to grant its management to a third party.

Option 2 is the most promising option since it excludes possible conflicts of interest but does not discourage future investments in rail-related services by new entrant railway undertakings.

4.2. Availability of service facilities

Specific provisions that create incentives for more effective use of existing assets will create additional infrastructure capacity with minimum investment. Increased availability of service facilities will contribute to removal of specific bottlenecks in the rail market.

	Option 1	Option 2	Option 3
Availability of service facilities	Financial penalty in the case of non-use	Where service facility is not in use its owner shall publish operation of the facility for lease or rent.	Where service facility is not in use its owner shall publish operation of the facility for sale.

Option 1 will not always be effective since in order to prevent entry of new competitors, operators may prefer to pay financial penalties rather than re-open a facility.

The impact of option 2 will be moderate. New service providers will be able to take over previously unused service facilities and a growth in available services will result in lower tariffs for new entrant railway undertakings. Option 2 will require higher administrative costs than option 1 due to new administrative processes for leasing or renting the assets.

Option 3 imposes an obligation to sell the facility in the case of non-use. However, a facility owner interested in preventing entrance into the market of new railway undertakings may opt to sell to a real estate developer rather than another manager willing to run the facility.

Option 2 is the most promising. While administrative costs are expected to be higher than under option 1, they are largely paid back by the benefits.

4.3. Accounting separation

Empowering Regulatory Bodies to audit infrastructure managers' and railway undertakings' accounts will enable them to supervise account separation compliance and identify “unfair” behaviour or situations that need monitoring. A standard format and content for information would enable verification of compliance with charging principles.

	Option 1	Option 2	Option 3
Accounting separation	Oblige regular independent external audits and to deliver results to regulatory bodies	Empower rail regulatory body to carry out audits or initiate external audits to verify account separation and require cost accounting data in aggregated and standardised format with recommended minimum data	Empower rail regulatory body to carry out audits or initiate external audits to verify account separation and require cost accounting data in aggregated and standardised format with comprehensive unified set of data and template

Option 1 will reduce market distortions and improper use of state funds and increase internal competition. However, the economic impact under option 2 will be higher as better information will enable Regulatory Bodies to effectively monitor compliance of infrastructure managers with charging principles, leading to lower, more transparent infrastructure charges.

While ensuring the completeness of cost accounting data, introducing a common detailed template in Option 3 will result in additional administrative costs for the public sector and business, but will not substantially increase the option's effectiveness.

Option 2 is preferred as it enables effective supervision by regulatory bodies of infrastructure managers and incumbent railway undertakings without high administrative costs of option 3.

4.4. Support to operators in case of discriminatory treatment

Extending the competencies of competition authorities or regulatory bodies to enable them to provide adequate support to operators in case of discriminatory treatment in access to service facilities will reduce market entrance barriers for new entrants, trigger the development of business activities and in some cases result in lower service prices.

	Option 1	Option 2	Option 3
Support to operators in case of discriminatory treatment	Recommend that Member States empower competition authority to carry out emergency procedures in the context of dominant-position cases	Extend scope of regulatory bodies competences to cover Decisions related to Annex II of Directive 2001/14 (rail-related services)	Extend scope of regulatory bodies competences to cover Decisions related to Annex II of Directive 2001/14 (rail-related services) Include fast track emergency procedures which allow ex ante intervention.

The introduction of emergency procedures in option 1 for dominant-position cases that fall under the statutory scope of competition authorities will speed up access to service facilities for new entrants. However, a number of dominant position cases would remain and additional administrative costs are foreseen.

Under option 2 competition authorities retain the power to intervene, but rail market players may also appeal to Regulatory Bodies on matters of discriminatory treatment. This will contribute more effectively than option 1 to reducing discrimination in access to rail-related services and in reducing market entrance barriers.

Option 3 also empowers regulatory bodies to act ex-ante in the context of dominant-position cases, but risks over-regulating the market by imposing decisions where no particular difficulties have been reported.

Option 2 is preferred since it will enable Regulatory Bodies to intervene in all cases in which operators feel discriminated against and to supervise matters that concern rail related services without the excessive administrative costs of option 3.

4.5. Independence of Regulatory Bodies

Additional independence requirements between Regulatory Bodies and incumbent railway undertakings will ensure full independence of their decision-making, thus creating grounds for fair competition in the rail market.

	Option 1	Option 2
Independence of Regulatory Bodies	<p>Make regulatory bodies independent in organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant as well as the public authority that exercises ownership rights over the incumbent railway undertaking</p> <p>and</p> <p>functionally independent from any competent authority involved in award of a public service contract.</p>	<p>Single national regulatory body to be established in each Member State as</p> <p>legally distinct and independent in organisational, functional, hierarchical and decision making terms from any other public authority,</p> <p>independent in organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant</p> <p>and</p> <p>functionally independent from any competent authority involved in award of a public service contract.</p>

Option 1 will eliminate conflicts of interests and create equal administrative capacity of Regulatory Bodies across the EU, thus removing market entrance barriers by ensuring equal opportunity for all railway undertakings.

Under Option 2 Regulatory Bodies will also be legally distinct and independent from any other public authority but would not acquire further independence from the infrastructure managers and incumbent railway undertaking as in option 1.

Option 1 is preferred as it will ensure adequate independence for all Regulatory Bodies in the EU, resulting in positive economic, social and environmental impacts. Administrative costs will be reasonable.

5. QUANTITATIVE ANALYSIS OF IMPACTS FOR THE WHOLE PROPOSAL

5.1. Economic impacts

In terms of **competition**, implementation of the package of modifications will have a slight impact on freight modal share, leading to a stabilisation or earlier inversion of the baseline negative trend. As regards new entrants, modifications proposed in the package should be capable of generating up to 3-4% more new railway undertakings and up to 2-3% more market share for non-incumbents. From a **quality** point of view, fatalities in road freight transport would be avoided but there would be a low or very low correlation between market opening and punctuality. Finally, operating costs could be reduced by about 6%.

5.2. Administrative cost

Two types of administrative cost have been taken into account: **one-off administrative costs**, defined as start up-cost or costs incurred when re-designing the way administrative obligation or specific action are met; and **recurrent administrative costs**, defined as annual costs. These costs primarily consist of new publication requirements for Member States (charging rule framework and medium/long-term development strategy), infrastructure managers (new info in network statement), managers of terminals (access conditions) and licensing bodies (license conditions).

5.3. Social impacts

As regards **employment**, the package would have an impact, representing over 1.700.000 working hours equal to more than 1.000 additional workers. The modal shift from road to rail results in a slight decrease of employment in road transport. There would be general demand for more skilled personnel and a higher demand for training centres.

5.4. Environmental impacts

It is expected that implementation of the modifications will provide benefits in reduced CO2 emissions and improved air quality. The package may be disadvantageous in terms of noise emissions due to increased traffic but this is off-set by noise-abatement measures. Benefits due to a reduction of energy consumption are expected to have maximum effect in the year of full implementation and then decrease slightly because of improved energy efficiency expected for heavy duty vehicles.

6. MONITORING AND EVALUATION

Information in the existing monitoring systems should be used while additional indicators should be established. Implementation of the initiative depends on the joint efforts of the Member States, thus it is crucial that monitoring systems are harmonised.

Since most relevant indicators are currently monitored through the Rail Market Monitoring Scheme (RMMS)³ the monitoring of this initiative could be carried out within RMMS.

³ See COM(2007) 609 and COM(2009) 676.