



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

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Opinion

Title **Impact Assessments on the Recast of the First Railway Package – RESUBMISSION**

(draft version of 27 October 2009)

Lead DG **DG TREN**

1) Impact Assessment Board Opinion

(A) Context

Community legislation in the railway sector has been developing since 1991, principally through the adoption of a number of legislative packages aimed at the progressive integration of the market for rail transport services. In 1996 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 adoption of the first railway package (consisting of three directives) at the end of 2000 followed from the analysis of this White Paper. In May 2006 the Commission published a report on the implementation of the package, which constitutes (together with a number of other reports and Commission communications) an important reference point for this impact assessment.

(B) Positive aspects

The report has clarified the scope of the initiative, explained the link between the problems, objectives and the proposed measures, proposed alternative approaches, discussed the distribution of impacts among Member States and calculated administrative burdens in the format of the EU Standard Cost Model.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

General recommendation: Several key issues still require further explanation in the report. Most importantly, it needs to strengthen the evidence to illustrate the

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existence and scale of the problems under the current EU railway legislation to be addressed by the five proposed new measures. As regards the proposed measures which regulate the use of property imposing the legal, organisational and decision-making separation of rail-related service facilities from incumbent railway undertakings and which oblige to lease or rent unused service facilities, the report still provides insufficient justification for the proposed approach as regards their proportionality or effectiveness. The report should also be clearer about the degree of uncertainty of the quantified impacts. Finally, the main IA report should be made more self-explanatory by including relevant summaries of the key impacts of this initiative (such as on administrative burden, the comparison of options and how the impacts are distributed among Member States).

(1) Provide more clarity on the nature and magnitude of the underlying problems and the scope of the initiative. While the report has made an effort to improve the problem definition, it needs to strengthen further the evidence to illustrate the existence and scale of the problems to be addressed by the five proposed “new” measures. In particular, the report should show the scale of the discrimination in access to rail-related facilities by incumbent railway undertakings, substantiate the claim that those facilities are sometimes being withdrawn from use (to the detriment of new entrants) and explain why those problems could not be solved by the market (possibly in combination with better implementation of the existing law). It should also discuss more extensively the issue of non-compliance by infrastructure managers with charging principles and explain how it affects competition. As requested in the Board's first opinion, the report should provide clarity on which problems result from the poor implementation of existing EU law (such as the first railway package) and which are new substantive issues.

(2) Better justify the new measures by comparing them with possible alternatives. In accordance with the Board’s first opinion, the report has identified the “new” measures for which no impact assessment has already been carried out and compared each of them with alternative approaches. However, the justification for the selection of the preferred options should be further strengthened especially for those two measures which regulate the use of property (legal, organisational and decision-making separation of operators of the service facilities from incumbent railway undertakings and the obligation to lease or rent of unused service facilities). More specifically, the report should (i) explain more clearly why regulatory bodies or competition authorities could not sufficiently solve the problem of discrimination in access to rail-related services or withdrawing from use respective facilities, and whether granting them new powers in this respect could be a more proportionate option, (ii) analyse more fully whether separating rail-related services from incumbent railway undertakings would indeed lead to reduced overall prices for rail-related services (including charges to incumbent railway undertakings), and (iii) clarify the practical implications of the obligation to rent or lease unused facilities, such as whether (and on what terms) this would include an obligation to enter into a contract. As requested in the first Board opinion, subsidiarity aspects need to be systematically explained for each of the “new” measures.

(3) Clarify the methodology used, and especially the link between the measures proposed and their effects. While annex XIV of the revised report gives a detailed overview of the methodology used, the report should be clearer about the degree of uncertainty of the quantified impacts (such as 3-4% more new railway undertakings, 2-3% more market share for incumbents, 1000 additional jobs) by referring explicitly to their respective margins of error. While the report has provided in annex XIV the list of

measures affecting working conditions in rail-related services, it needs (as requested in the first Board opinion) to provide examples illustrating how these will lead to improvements in this area.

(D) Procedure and presentation

Given that the IA report should be a self-standing document, the main report and the executive summary should present the overall distributional impacts of this initiative and the impacts on administrative burden. The main report should also include a list of measures clarifying the existing provisions and a summary comparison of options for each of the five groups of new measures (currently this information is only available in the annexes). The main report and its annexes should be reviewed with a view to eliminating repetitions (such as the recurrent paragraph on the impacts of a possible modal shift or in sections 4.7 and 4.9 of Annex XIV) or references to non-existing sections or tables (see for example Annex XIV on p.140 and 142). The information provided in section 2.4 of annex XIII should be checked for consistency.

2) IAB scrutiny process

Reference number	2006/TREN/004 (SRP / 2008 / Recast, SRP / 2007 / Recast, SRP / 2006 / Recast)
Author DG	TREN
External expertise used	No
Date of Board Meeting	Written procedure
Date of adoption of Opinion	<p style="text-align: center;">13 NOV. 2009</p> <p>The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 7 July 2009.</p>