

Conclusions of the European Commission workshop on agreements concerning cross-border rail transport
Brussels, 13 July 2006

As a follow-up to a study that the European Commission requested the consultancy company Colin Buchanan and Partners to undertake on the compliance of rail border traffic agreements with EU rail and competition legislation¹ the Commission organised a workshop with relevant stakeholders on such agreements.

The purpose of the workshop was to present existing cross-border agreements at state level and at company level or work in progress in order to share with other parties experience gained on setting up or revising agreements that fulfil their purpose (facilitating international rail traffic) under the current legal framework in the Community.

Representatives of public authorities in Member States, European institutions such as the European Railway Agency, the European Commission, railway undertakings and rail infrastructure managers participated in the workshop.

Currently, there are agreements on the general framework for cross-border rail traffic (e.g. on the construction of new lines or the award of concessions to build and/or to operate such lines, security controls for passengers and freight, defining competences of railway staff in cross-border operations, etc.) for services within the European Community and for services across the external border of the Community (dealing in addition e.g. with sanitary and veterinary checks and customs controls). Other agreements can address problems related to different technical specifications of the rail systems and of safety rules at the level of public authorities (e.g. national safety authorities) and at company level (e.g. between railway undertakings or infrastructure managers to overcome rail interoperability problems).

Representatives of public authorities in Member States presented examples of the various kinds of agreements (see agenda of the workshop attached).

The major conclusions of the presentations and discussions are:

When the rail systems in Member States will be fully interoperable, border crossing agreements having the objective to ease the negative impacts of technical and regulatory rail transport market fragmentation are likely to become obsolete. The Community policy with its Directives on rail interoperability and safety pursues the objective of creating a common European railway area. The effective implementation of this policy will however require some years.

Until such a situation has been reached, (bilateral) agreements can have a potentially positive impact on cross-border rail transport, as regards reduced costs, reduced stopping times at borders and a better quality of service. Agreements with third countries at the external EU border where Community law does not apply continue to play a useful role.

Cross-border traffic agreements can have a long history and thus be drafted to fit into a regulatory framework that is not up-to-date anymore. It is well understood that provisions being in conflict with current Community law are void and non applicable. Therefore, there may be a case for revising existing older agreements to ensure their effectiveness under the current legal framework.

Agreements between states can provide the framework for political initiatives to facilitate international rail transport, for instance on certain principal traffic corridors, or for the co-operation of

¹ Colin Buchanan and Partners, Study on the compliance of rail border traffic agreements with EU rail and competition legislation, June 2005, report submitted to the European Commission published under http://ec.europa.eu/transport/rail/research/studies_en.htm

public authorities such as national safety authorities and authorities issuing contracts for the provision of public transport services. In order to reach a high level of effectiveness and non-discrimination of the agreements it is important to ensure transparency in the preparatory phase, for instance through extensive stakeholder consultations. The question whether common guidelines for cross-border traffic agreements would be needed raised some controversy. It was argued that following the existing legal Community rules for the railway sector would provide sufficient guidance.

Agreements on interoperability and rail safety between public authorities to facilitate cross-border traffic, for instance between national safety authorities on the mutual recognition of train drivers can bring about a number of additional positive effects. The co-operation between the authorities can enhance the knowledge of the other country's system requirements and procedures and hence strengthen mutual trust. The experience generated with the agreements will improve the knowledge base for the European Railway Agency and the European Commission to improve proposals under the Community rail interoperability and safety legislation.

In the area of non-exclusive Community competence Member States may enter into agreements with other parties, in particular with 3rd countries. They are however required to ensure full coherence with Community legislation. According to current jurisdiction even in the case of the subject of the agreement falling within the power of the member States they must exercise that power consistently with the principles of Community law (e.g. non-discrimination). As the Commission as the guardian of the European Treaties has to ensure that Community legislation is respected Member States are asked to inform the Commission of any draft agreement on cross-border rail traffic. The Commission reminded that Member States are obliged according to the Technical Specification of Interoperability for rail wagons adopted on 28 July 2006 to notify to the European Commission any agreement between Member States, railway undertakings or infrastructure managers related to this TSI.

Until full technical and regulatory rail market integration is achieved **agreements on cross-border rail traffic between companies** (e.g. at the level of rail infrastructure managers or railway undertakings) can bring about significant gains in time and resources. An objective should be to reach a high level of cost-effectiveness of the measures taken, for instance, to enhance rail system interoperability. In any case, the provisions of the agreements must be non-discriminatory in relation to railway undertakings not participating in the agreement and must be in line with Community Competition rules. This should, for instance, include non-discriminatory access to facilities which are necessary for access to the networks, such as shunting yards. Infrastructure managers have to indicate clearly (e.g. in the network statements) which facilities are available.

Next steps:

- The Commission will consider whether or not a best practice guide on drafting of state agreements in the rail sector would be helpful and appropriate.
- Notification by Member States of agreements in preparation to the European Commission.