



EUROPEAN COMMISSION

Brussels, 20.8.2013
C(2013) 5508 final

Mr Per WESTERBERG
President of the Riksdag
SE – 100 12 STOCKHOLM

Dear President,

The Commission would like to thank the Riksdag for its Opinion concerning the Proposal for a Regulation on the European Union Agency for Railways {COM(2013) 27 final}, the Proposal for a Regulation of the European Parliament and the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail {COM(2013) 28 final}, the Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure {COM(2013) 29 final}, the proposal for a Recast Directive on interoperability of the rail system {COM(2013) 30 final} and the proposal for a Recast Directive on railway safety {COM(2013) 31 final}, and apologises for the delay in replying.

First and foremost, the Commission would like to reassure the Riksdag that the aforementioned proposals have been based on thorough impact assessments in line with the Better Regulation agenda. The impact assessments have relied on an in-depth analysis of the national railway markets and structures across Europe and, very importantly, on a broad consultation process with stakeholders, local authorities, social partners and a survey with 25.000 citizens throughout Europe. The subsidiarity assessment of the proposals (necessity test and text of EU value added) has also been documented in the impact assessment reports accompanying the proposals and its annexes, and that for all options considered¹.

The Commission welcomes the Riksdag's support towards technical harmonisation which entails a reduction of costs and administrative burden for railways and to the continued efforts of the Commission to increase the competitiveness of railways.

The Commission would like to emphasize that the reinforcement of the role of European Railways Agency is proportionate to meet this objective. Please note that there are marked

¹ http://ec.europa.eu/commission_2010-2014/kallas/headlines/news/2013/01/fourth-railway-package_en.htm

discrepancies between how national safety authorities conduct vehicle authorisations and safety certification processes throughout the Member States, and in particular the established periods for issuing certificates are systematically circumvented by certain national safety authorities through additional documents and testing. Moreover, the significant number of national rules (currently registered 12000 national rules) adds to unnecessary costs and complexity for railway operators, especially those wishing to enter a new market. The proposals create an institutional structure in railways akin to the one existing in air transport and would contribute to significant simplification of the interoperability and safety procedures and cut red tape.

The Commission would like to underline that an estimated 70% of rolling stock registered in the EU runs at least partly on TEN networks and that the excessive customisation of rolling stock adds to the costs to railway systems, as railway manufacturers cannot reap the benefits of economies of scale. The lowering of the costs of rolling stock is essential to increase the competitiveness of railways.

The Commission agrees with the Riksdag that competitiveness and attractiveness of railways should be increased for users to choose rail as an environmentally sustainable mode of transport. In this respect, the Swedish railway system has actually performed much better than most of the existing railway systems in Europe both in terms of efficiency and satisfaction, as documented in the Commission impact assessments.

The Commission notes that the proposals on domestic market opening and governance are very much in line with the current Swedish railway legislation. The Commission would like to emphasize that the proposal confirms the prerogative of Member States to decide whether to provide its transport services under public service obligations and to determine the scope of public service contracts in order to best meet the needs of their population.

The relative degree of freedom of Member States and their competent authorities in choosing the award procedure for public service contracts is limited by the EU case law. The Court of Justice has clearly established, for matters of public procurement, that contracts that are not or only partially subject to the public procurement Directives are subject to the principles arising from Art 49 (right of establishment) and Art 56 (freedom to provide services), at least as far as these contracts are of a "certain cross-border interest"². This means that the award of those contracts has to be subject to transparent procedures. EU case law has already been recognised by Regulation 1370/2007 for modes other than rail, which are already subject to open tendering provisions. The extension of this principle to rail appears thus as a logical step to complete the process.

Additionally, the award of public service contracts based on open tendering procedures opens up the opportunity to reap the potential for significant savings of public funds and the provision of high quality services. This has been the experience in several Member States which have opened up their domestic market to competition as documented in the Commission impact assessment. Besides, the Commission would like to emphasize that the generalisation of open access for commercial rail services and competitive tendering for

² C-507/03 Commission vs Ireland, judgement of 13.11.2007

public service contracts in the EU will allow Swedish railway undertakings to continue developing their business activities also in other EU Member States.

The Commission agrees with the Riksdag that a rail market opening policy should be accompanied by measures to preserve positive network benefits. For that reason, the Commission proposals encourage Member States to decide on whether to put in place integrated information and ticket systems in full compliance with the principles of subsidiarity and proportionality.

The Commission hopes that these clarifications address the concerns raised by the Riksdag and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*