



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG MOVE - Impact Assessment on access to domestic rail passenger markets**
(resubmitted draft version of 23 November 2012)*

(A) Context

The EU railway market has seen major changes in the recent decade. They were gradually introduced by three legislative "railway packages" (with some accompanying acts) intended to open up national markets and make railways more competitive and interoperable at the EU level, while maintaining a high level of safety. The most recent development is the adoption of the recast of the 1st Railway Package on 29 October 2012, which, in addition to legislative simplification and consolidation, clarifies certain provisions on competition issues, regulatory oversight and financial architecture of railway operations. Despite the considerable development of the 'EU acquis' establishing an internal market for rail transport services, the modal share of rail in intra-EU transport has remained modest. Therefore the Commission has planned to put forward a 4th Railway Package in order to enhance the quality and efficiency of rail services. This impact assessment focuses on opening the domestic rail passenger market, granting open access rights where appropriate while also addressing the public service contracts (PSCs) award process, in order to complete the process of rail passenger market opening. Accompanying measures are foreseen to facilitate Member States' retaining integrated timetabling and ticketing systems where this benefits the passenger.

(B) Overall assessment

While the report has been improved on a number of points along the lines of the Board's recommendations in its first opinion, the evidence presented to demonstrate the need for and value added of an EU initiative to further open domestic rail passenger markets remains very weak. It should be significantly improved on a number of important points. First, the report should provide clearer arguments and factual evidence to show to which extent existing deficiencies in the quality, availability and efficiency of rail services are driven by lack of effective competition in domestic rail markets, and it should more explicitly address subsidiarity concerns. Second, it should present, assess and compare a broader range of alternative policy scenarios to better inform about available policy choices. Third, the report should strengthen its assessment of economic, social and environmental impacts, and in particular its analysis of the impacts of all options on final consumers, employment and working conditions. Fourth, it should explain why no robust calculation of costs and benefits of the various options could be provided and that the choice of the preferred option has been made on purely qualitative grounds.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

Finally, the report should further strengthen the references to the views of different stakeholder groups and national authorities throughout the report.

Given the nature of these concerns, the IAB requests DG MOVE to submit a revised version of the IA report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Address or acknowledge the weaknesses in the evidence base. The report should either produce more concrete factual evidence to support the central contention that more market opening as introduced in a number of Member States has indeed resulted in better performance (e.g. lower prices, increased punctuality, availability of railway services, etc.), or acknowledge that no such robust evidence has been found. The distinction between arguments based on factual evidence and stakeholder opinions should still be made clearer throughout the main text. The report should also better explain the methodological challenges associated with comparing national systems. Although an attempt has been made to define benchmarks (in Annex 3), the argument remains rather difficult to follow, and the impact on the line of reasoning in the main text is very limited. The report should still produce a more robust comparative exercise between Member States with different regimes. If the report concludes that it is not possible to compare national railway systems in terms of efficiency and passenger satisfaction because of the influence of factors such as population density and geographical urban concentration, it should acknowledge this more explicitly, and draw the necessary conclusions. The report's revised approach to comparing national railway systems performance (measuring the growth of efficiency indicators and the decrease/growth of its variance) does not address performance on the level that is relevant for consumers (prices, timetable, punctuality, safety, etc.), and should therefore be completed to address this or omitted. The need for action now should be discussed in the light of the absence of evaluative information on the current framework. Subsidiarity argument need to be further strengthened, especially with regard to urban networks. A clearer reference should be made to the issue concerning transfer of staff that has now been addressed in the section on implementation provisions under the preferred option.

(2) Broaden the range of alternative policy scenarios. The report should provide clearer arguments why no alternative options to address the competition for PSCs and the supervision of their scope, with different degrees of ambition for the level of competition targeted for this segment, are viewed as feasible. It should nevertheless briefly explain what such alternatives would look like (in theory). The report should present more comprehensive alternative policy packages (for instance based on market opening options 3 and 5 as requested in the first opinion), and their impacts should be properly assessed. The report should still strengthen the argument behind the additional options for ticketing and rolling stock, and give an overview of implementation issues already addressed in previous Railway Packages, with a brief discussion of preliminary findings with regard to their effectiveness.

(3) Strengthen the analysis of impacts. Although the report has added some material from the Annexes to the assessment of economic, social and environmental impacts, no studies specifically focusing on social impacts of domestic market liberalisation have been mentioned. The report still needs to strengthen its analysis of impacts on final consumers (both in terms of prices and quality of services). It should also be clearer on the effects on employment and working conditions, as well as SMEs, including relevant

references to available studies. The report should acknowledge that its analysis of the labour market effects rests on rather inconclusive evidence. It should review its analysis on job creation and job losses to explicitly differentiate across different skill levels. The report should still explain better which benefits consumers are to expect from increased competition: in particular it should provide more compelling evidence for the assumption that the proposed forms of competition will lead to lower fares, and it should explicitly analyse the possible effects of fragmentation of services on the transparency of ticket pricing. The report should acknowledge that its reference to instances of possible predatory pricing ('price wars') does not constitute compelling evidence for structural downward pressure on fares. In the assessment of economic impacts, the treatment of investment should still be considerably strengthened and pay attention to the incentives for new and incumbent Railway Undertakings.

(4) Improve the method used for assessing impacts and comparing options. The report should still more clearly indicate where the assessment is based on objective evidence and where on stakeholder opinions or on both, as this is not addressed by the insertion of Annex 6 (Literature review). Where the report admits that the quantitative simulations are insufficiently robust to underpin the choice among different options (which is made on purely qualitative arguments), it should reconsider the usefulness and credibility of carrying out a scenario exercise on the preferred option only. It should discuss how the final results of the study may affect the conclusions of the report. The study itself will need to be made accessible to the public. The report needs to further clarify to what extent the qualitative assessment in terms of the +, - and 0 indications are analytically underpinned and comparable (also taking into account the occurrence of different short-term and long-term effects on for example employment), and that they allow indeed to arrive at an overall comparison of options. The report should still provide a comparable analysis for all options, with clearly defined criteria on which the options are assessed. As no evidence is presented to show that either of the two options investigated with regard to rolling stock will produce significant improvements upon the baseline, they should be complemented by an alternative option that does make a positive difference.

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

(D) Procedure and presentation

The report still needs to explain better why no full, open consultation could be undertaken. It should also present the limitations of Eurobarometer surveys more transparently. The views of all relevant stakeholders and Member States could still be better reflected throughout the main text.

(E) IAB scrutiny process	
Reference number	2012/MOVE/017
External expertise used	No
Date of IAB meeting	Written procedure. This opinion concerns a resubmitted draft IA report. The first opinion was issued on 9 November 2012.