



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG MOVE - Impact Assessment on a legislative proposal on the governance of railway infrastructure in the Single European Railway Area (draft version of 11 October 2012)***

(A) Context

The EU railway market has seen important changes in the recent decade. They were gradually introduced by three legislative "railway packages" intended to open up national markets and make railways more competitive and interoperable at the EU level, while maintaining a high level of safety. 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. The European Council conclusions of January 2012 highlight the importance of unleashing the growth-creating potential of a fully integrated Single Market, including measures with regard to network industries. Furthermore, the Commission Communication on Action for Stability, Growth and Jobs adopted on 30 May 2012, stresses the importance of further reducing the regulatory burden and barriers to entry in the rail sector. The Commission is therefore putting forward a 4th Railway Package. The present impact assessment looks at issues related to railway infrastructure management and access barriers to railway networks.

(B) Overall assessment

The report needs to be significantly improved in a number of important respects. Firstly, it should enhance the problem description by underpinning it with robust evidence-based statements, including evidence about performance differences due to different regulatory schemes across EU Member States. Secondly, the report should clarify why a number of Member States have decided not to institutionally separate the infrastructure manager from the incumbent railway company. Thirdly, the report should present real options and improve the current packaging of options by considering more differentiated alternative policy scenarios. Fourthly, the report should provide a robust quantitative and qualitative cost/benefit assessment and comparison of the redesigned options. This should include a clear definition of the criteria used for the ranking of options and a stronger justification for the conclusions drawn, for instance, regarding the correlation between the level of separation and alleged positive impacts on several issues, including the intensity of the use of infrastructure. Finally, the report should systematically present stakeholders views, in particular with regards to the most controversial options, such as the optimal level and method of separation, including those from most critical stakeholders.

Given the nature of these recommendations, the Board asks DG MOVE to resubmit a new version of the report, on which it will issue a new opinion.

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

(C) Main recommendations for improvements

1) Underpin the problem description with robust evidence. The report should strengthen the problem definition by complementing the anecdotal evidence provided with sound data, reliable benchmarks and evidence-based statements. The revised problem definition should be based on Member States' experiences with liberalisation and unbundling both in the railway sector and in other network sectors, such as telecoms or energy. It should clarify to what extent performance differences can be attributed to different national regulatory schemes. Evidence drawn from the comparison of different Member States should be based on comparable criteria and context factors. In addition, the problem definition should be developed to cover other important relevant aspects, such as safety, employment, working conditions and skill composition.

2) Clarify the context. The report should describe the reasons why some Member States have decided not to institutionally separate the infrastructure manager from the incumbent railway company. It should also better explain why action is recommended to be taken now, despite the fact that neither the Recast of the 1st Railway Package has come into force nor has the European Court of Justice ruled on the reported infringement cases.

3) Better present the options. The report should simplify the presentation of the options by eliminating the redundant ones. The packaging of options into different policy scenarios should also be reviewed since their only difference lies in the separation options and therefore the subsequent analysis just focuses on them to the detriment of the other options within the same scenario. In addition, the report should more fully describe the content of the different options to allow the reader to better understand their implications. The report should also analyse options strongly supported by a number of stakeholders, such as reinforcing the role of the national regulators, or better explain why these options have not been retained for the analysis.

4) Strengthen the analysis and comparison of options. The assessment and comparison of the options should be improved by underpinning the arguments provided with stronger, more robust and conclusive quantitative and qualitative evidence, and taking into account Member States' experiences with unbundling. In this respect, the cost/benefit analysis should go beyond stating the alleged benefits of increased competition and present in more detail what the economic, social and environmental impacts of the proposed options will be. Differences between policy scenarios 2 and 3 should be more clearly presented, the criteria for ranking the options should be clearly defined and the reasons for ranking one option/scenario over the other better justified. Inconsistencies between the evidence provided, e.g. figure 3, and the accompanying analysis should be avoided. Conclusions that cannot be substantiated should be deleted.

5) Better present stakeholders' views. The report should better describe throughout the analysis stakeholders' positions, notably Member States' and social partners' views. In particular, different stakeholder opinions regarding controversial options, such as the optimal level and method of separation, and their possible employment and social impacts, should be clearly presented. In addition, when analysing the options, stakeholders' concerns and views regarding the expected consequences of the pursued enhanced competition on employment, working conditions and safety should be openly reported. Finally, the report should also explain in the main report why an open consultation was not carried out.

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 should facilitate access to the sources used by providing each study's references and, where possible, the link to the web page where they can be found. All conclusions should be substantiated and based on evidence. In addition, all figures/graphs should be readable and explained in the text.

(E) IAB scrutiny process

Reference number	2012/MOVE/017
External expertise used	No
Date of IAB meeting	7 November 2012