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REPORT

From:	General Secretariat
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No. Cion doc.:	ST 5985/13 TRANS 36 CODEC 216 ST 5960/13 TRANS 35 CODEC 209
Subject:	<i>Preparation of the Council meeting (Transport, Telecommunications and Energy) on 8 October 2014</i> 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 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail - Policy debate

I. INTRODUCTION

On 30 January 2013, the Commission presented the fourth Railway Package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area, contributing thereby to an increase in the modal share of rail in intra-EU transport.

More specifically, the main objective of this legislative package is to enhance the quality and efficiency of rail services by removing remaining legal, institutional and technical obstacles, fostering the performance of the railway sector and its competitiveness.

This legislative package can be divided in two pillars: the so-called "technical" and "market" pillars.

II. WORK WITHIN THE COUNCIL

The examination of two of the three Commission proposals of the "market pillar" at the Working Party on Land Transport started on 8 July and continued on 15 and 22 July, 2, 9 and 19 September 2014.

During those working party meetings, delegations were invited to consider various questions drafted by the Presidency in view of the policy debate taking place at the TTE Council on 8 October 2014.

III. CONCLUSION

The Permanent Representatives Committee is invited to endorse the questions in Annex and Ministers are invited to focus their interventions on the same questions during the TTE Council on 8 October 2014.

Introduction

The fourth Railway Package aims to establish a Single European Rail Area to complete the internal market for rail transport and simplify the legal environment for operating rail services in Europe. The 'technical pillar' of the package aims to remove the remaining administrative and technical barriers, in particular by establishing a common approach to safety and interoperability rules as well as strengthening the European Railway Agency. The 'market pillar' aims to open the domestic rail passenger market to competition, strengthening the governance of infrastructure management and enhancing transparency of financial flows.

Significant progress has been made in the Council and the European Parliament on the technical pillar of the fourth Railway Package and the Italian Presidency is ready to engage with the newly appointed rapporteurs in negotiations with the aim of securing the adoption of this pillar by December 2014.

The Italian Presidency, considering the fourth Railway Package as a whole, also started discussions on the market pillar in the Land Transport Working Party, with a view to preparing the present policy debate. The policy debate will be structured along the lines of the attached questionnaire.

The Commission proposals rely on a dual and step-by-step approach to market opening:

- a) Commercial services, for which the freedom to provide services would be guaranteed to all EU rail operators as from 2019 (competition *in* the market);
- b) Public services, for which EU rail operators would be authorised to compete through the generalisation of competitive awards of the contract (competition *for* the market).

Progressive domestic market opening

According to the Commission, improvements in service quality and efficiency are needed to make rail a more attractive choice for passengers and to encourage modal shift. Increased competitive pressure will enhance operational efficiency and the attractiveness of rail and make the sector more responsive to customers' needs, allowing rail operators to compete with other modes. It will also incentivise the development of the rail network.

Furthermore, the Commission considers that market opening needs to preserve public service and prevent operators concentrating their activity only on the most profitable routes, thereby putting at risk the viability of public service contracts. To this end, the Commission proposes to empower regulatory bodies to apply (ex-ante) a test of economic equilibrium to limit new commercial services if they would demonstrably endanger the economic viability of public services contracts. The Commission proposals foresee the possibility for public service contracts to include both profitable and non-profitable routes.

Efficient and high quality public services in rail transport

The Commission considers that competitive award procedures will enable competent authorities to ensure better value for public money. Under Regulation 1370/2007, competent authorities currently have the possibility to either competitively award a public service contract or to directly award it. According to the Commission, this results in an incomplete EU regulatory framework and a lack of competitive pressure which may have negative impacts on operational efficiency, service quality and efficiency of public spending.

The Commission has therefore proposed to introduce the general principle of competitive awards of rail public service contracts. The possibility of direct awards might nevertheless still be needed in certain situations, for example where there is insufficient interest by market actors in submitting bids, for small national market volumes or in case of technical or physical isolation of the national rail network. Authorities may also want to resort to direct awards to reschedule launch dates of competitive tender procedures in view of obtaining higher response rates. Other exceptions could be envisaged in well-targeted and specific cases.

Strengthening the role of infrastructure managers

Infrastructure managers are essential protagonists for the good functioning of rail markets in Europe, together with regulatory bodies which have already been reinforced. According to the Commission, with a more coherent perimeter of responsibilities, infrastructure managers will be able to maximise the use of their assets, thus improving the use of public funds and reducing the debt of infrastructure managers.

The Commission proposes to strengthen the independence of infrastructure managers. In order to make market opening a success and attract new operators, investors and services, there should be fair and equal access for all to the rail network. Therefore, the Commission foresees governance requirements for infrastructure managers, whether they are separated or part of a vertically integrated undertaking. This is designed to guarantee internal financial transparency, objectivity and impartiality.

Questions relating to the market pillar of the fourth Railway Package

1. Do ministers agree that opening domestic markets will encourage investment and innovation in rail services and render the railway sector more dynamic and customer-oriented, and will contribute to efficiency and quality in the railway sector? How can public services be efficiently provided in the context of market opening? Is there a need for a transition period? If so, are additional specific measures necessary during the transition period to ensure a level playing field between different railway undertakings?
 2. Do Ministers consider that there is a need for additional measures to ensure non-discriminatory access to the network, financial transparency and the absence of conflict of interests irrespective of the type of structure (separated or vertically integrated)? Do you see a need to also reinforce the role of regulatory bodies?
 3. Do you agree that the principle of competitive award should be the general rule to award public service contracts in the rail sector with only clear and justified exemptions? Do you consider the possibility for public services to include profitable and non-profitable lines as appropriate? How to ensure a non-discriminatory access to rolling stock for railway undertakings?
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