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Subject: ***Preparation of the Council meeting (Transport, Telecommunications and Energy) on 13 March 2015***

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. Under the market pillar, two Commission proposals are under discussion at the Council: the proposal for a Directive 2012/34/EU 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 (hereafter the "draft Governance Directive") and the proposal for a Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (hereafter the "draft PSO Regulation").

II. WORK WITHIN THE COUNCIL

On 7 January, the Presidency presented its compromise proposals on the draft Governance Directive and on the draft PSO Regulation at the Working Party on Land Transport (hereafter, "the Working Party"). Delegations were invited to provide comments on those compromise proposals by the end of January. The Presidency compromise proposals were examined together with the delegations' comments at the Working Party meetings on 10 and 17 February 2015.

Taking stock of the delegations' comments made at those meetings, the Presidency is of the opinion that political guidance from the Ministers is needed on some of the open issues on those two files, while the remaining outstanding issues could be dealt with at the level of the Working Party for the time being. Therefore, the Presidency has prepared several questions in view of the policy debate taking place at the TTE Council on 13 March 2015.

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 13 March 2015.

I. Draft Governance Directive

Independence of infrastructure managers

One of the aims of the Draft Governance Directive is to improve the regulatory framework for the governance of railway infrastructure. The Commission proposal suggested establishing fully-fledged infrastructure managers performing a comprehensive set of functions and being subject to strong independence requirements.

Several Member States have argued that not all the functions of infrastructure managers should be subject to identical safeguards/independence requirements.

The current text proposes a more flexible approach towards independence requirements, distinguishing between essential functions of an infrastructure manager and other functions. It defines a common set of independence requirements that applies to infrastructure managers in performing all its functions and additional requirements to be met in performing the essential functions.

Do you perceive the approach presented by the Presidency of defining a set of general independence requirements applying to all functions of an infrastructure manager and additional independence requirements ensuring the highest degree of impartiality with regard to essential functions appropriate to achieve effective and workable rules to ensure the independence and impartiality of the infrastructure manager? Are there areas, where further differentiation between independence requirements for essential functions and other functions is required?

Role of regulatory bodies

The current text of the Draft Governance Directive sets up criteria to be fulfilled in order to ensure infrastructure managers' independence. In particular, the proposal foresees an oversight of regulatory bodies as regards appointment, changes and retirement of members of the infrastructure manager's management board, supervisory board or senior management. Several Member States have expressed serious concerns of possible overregulation due to proposed ex-ante involvement of the regulatory body as regards such decisions.

The Draft Governance Directive provides for the ex-ante control by the national regulatory body in several cases. Are there any other alternatives that would ensure the same level of safeguards?

II. Draft PSO Regulation

Access to rolling stock

Where the market does not ensure access to rail rolling stock under suitable economic and non-discriminatory conditions, public service operators' needs to have such access to enhance the likelihood of effective competition for public service contracts in rail may be facilitated by competent authorities through adequate and effective measures. Meanwhile, a majority of Member States consider that such measures could create financial risks for them.

Non-discriminatory access to rail rolling stock is needed to ensure an effective opening of the markets for domestic passenger services by rail. What should the Member States or their competent authorities do in order to ensure effective and non-discriminatory access to rolling stock while limiting the impact on national budgets?