

Position on the European Commission's Proposal for a

Directive of the European Parliament and of the Council amending council directive 91/440/EEC on the development of the community's railways¹.

As announced in the White Paper *European transport policy for 2010: time to decide*, the Commission presents a proposal for the amendment of Directive 91/440/EEC with a view to opening up international rail passenger services to competition.

The introduction of competition is viewed favourably by the public, and, competition must be backed up by strict safety rules and passenger rights: a survey carried out in the 15 Member States in 2003 showed that 70% of those interviewed agreed: "If safety standards are met, competition is the best way to make the railways more efficient" and 74% of respondents considered that: "As with air transport, low-cost carriers should be able to operate international train services, if they comply with strict rules". The allowance of practicing cabotage will assist the development of competition in the international passenger market.

Moreover the European Parliament has advocated such an approach on several occasions, e.g. during the votes in 1999 on the first railway package and in 2003 on the second package. In October 2003, Parliament adopted an amendment calling for the opening up to competition of all national and international rail passenger services by 1st January 2008.

EIM is of the same mind and welcomes this proposal, also because:

- a framework to allow competition has been adopted and is being implemented (Directives 2001/12/EC, 2001/13/EC and 2001/14/EC, laying down precise rules on the licensing of railway undertakings, the transparent and non-discriminatory allocation of infrastructure capacity and charging for infrastructure use. In addition, it calls on the Member States to establish a "regulatory authority" to control access to the market);
- a strict framework for safety rules has been adopted, and the bodies to manage are or will be soon set up (Directive 2004/... on the safety of railways lays down rules on safety certification of railway undertakings, safety management and regulation, and accident investigation. It also provides for the gradual development of European safety rules which are to be drawn up by the European Railway Agency.
This framework will be supplemented a proposal presented concurrently on the certification of drivers of locomotives and trains for the carriage of passengers and freight in the Community;

¹ com (2004) 139 final 2004/0047 (cod)



- a draft regulation for protect railway passengers' rights is proposed, with the same purpose than to the one adopted some months ago for air transportation (Regulation 261/2004), but with some different obligations (for detailed comments, see our position) ;
- proposals have been made to take into account other aspects of the European legislation and in particular the need for coordination with the community legislation on public service contracts;
- the risks for the railway transport industry (and the Member States, which finance, at least partly, the infrastructure) are very low, be they either unrealistic and unstable path requests or a market collapse.

Nevertheless particular situations have to be taken into account, as the one of small or medium size countries, where railways are heavily used for commuters daily travel, and it is necessary to treat the current proposal in parallel to the amended proposal, COM (2002) 107, on public service obligations.

It is particularly important to ensure a balance that public service contracts not could be (mis)used to restrict open access international traffic that is deemed profitable and that competition does not degrade public services contracts.

We also believe that the chosen date (2010) gives sufficient time for preparation and for implementation of previously issued legislation. Experience shows, however, that Member States are sometimes slow in implementing railway provisions of EU legislation and making them work in practice. For these reasons we fear that a fully competitive and well regulated market (for rail freight) will not be in place by 2010. We therefore propose that further market opening should be conditional, i.e. the Commission should be obliged to table a report (by 2008) showing that the market for rail freight is well functioning and that Member States have put the necessary regulatory framework in place and that it is working in practice. Thus the Commission should be encouraged to make more efforts to monitor and enforce the implementation of previously issued legislation.

September 2004