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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 31 January 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: 4th RAILWAY PACKAGE
COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Accompanying the documents
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

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

Delegations will find attached Commission document SWD(2013) 11 final.

Encl.: SWD(2013) 11 final



Brussels, 30.1.2013
SWD(2013) 11 final

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{SWD(2013) 12 final}
{SWD(2013) 13 final}

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Lead DG: MOVE

1. PROBLEM DEFINITION

The performance of the railway sector in passenger transportation does not compare favourably to other transport modes. The 6% modal share for rail in the EU has remained fairly stable since the mid-nineties and contrasts sharply to the share of passenger cars (75%), buses (8%) and air transport (8%). Some countries have opened their domestic passenger transport market, while markets of other Member states are dominated by incumbents. ,

There are two main problems behind these issues. Firstly, low quality of rail passenger services is observed widely across the EU. A survey in 2012 revealed that only 46% of Europeans are satisfied with their national and regional rail system. Secondly, operational efficiency gaps of railway undertakings are observed within the wide range of different national models in Europe. Despite large subsidies of railways, many railway undertakings across the EU have been making losses for several years and, in some instances, have had to be repeatedly bailed out by taxpayers.

There is concurring evidence that these problems are driven by lack of competitive pressure and different market access rules across the EU hindering the consolidation of Single European Railway Area. In 16 out of the 25 Member States (MS) with rail, incumbent operators' market share remains above 90%. In such conditions, neither the competition *for* the market (several operators competing for the exclusive right of a specific route – a *public service contract* (PSC)) nor competition *in* the market (several operators running in the same route – *open access*) can be ensured. Also, since 1990 the efficiency gap between best and worst performers of the EU railways has increased, revealing differing development trends.

The root causes of these problems can be found in absence of competition for PSCs, market distortions caused by restricted access to necessary resources (such as rolling stock and integrated ticketing systems) and national restrictions to the freedom to provide domestic passenger rail services. Today, 42% of all the EU domestic passenger market is operated under PSOs attributed through direct awards. In addition, at least in 9 MS the incumbent

operator appears to still enjoy a domestic passenger services monopoly laid down in the national legislation.

These problems and the measures to be proposed to address them will affect a large number of actors in the rail market and beyond. In particular, they concern railway undertakings, passengers and the railway manufacturing industry. More fundamentally, these measures will also affect the way authorities manage public financing of the railway sector.

2. SUBSIDIARITY

Articles 58, 90 and 100 of the Treaty extend to railways the objectives of a genuine internal market in the context of an EU Common Transport Policy.

Actions by MS alone cannot ensure the coherence of EU railway market and address the divergent interpretation of the legislation, given the persistence of national rules and sub-optimal functioning of national institutions, acting as barriers to the internal market. Action at EU level aims to ensure consistent implementation of the EU rail *acquis*, which should lead to the creation of the Single European Railway Area (SERA) with no unnecessary administrative and technical barriers. At the same time compliance with subsidiarity principle is carefully assessed for the PSC related market opening measures which are geared towards maximum flexibility to be left to MS.

3. OBJECTIVES

General objective:

Improve the quality of rail passenger services and enhance their operational efficiency thereby improving the competitiveness and attractiveness of rail sector vis-à-vis other modes and developing further the SERA.

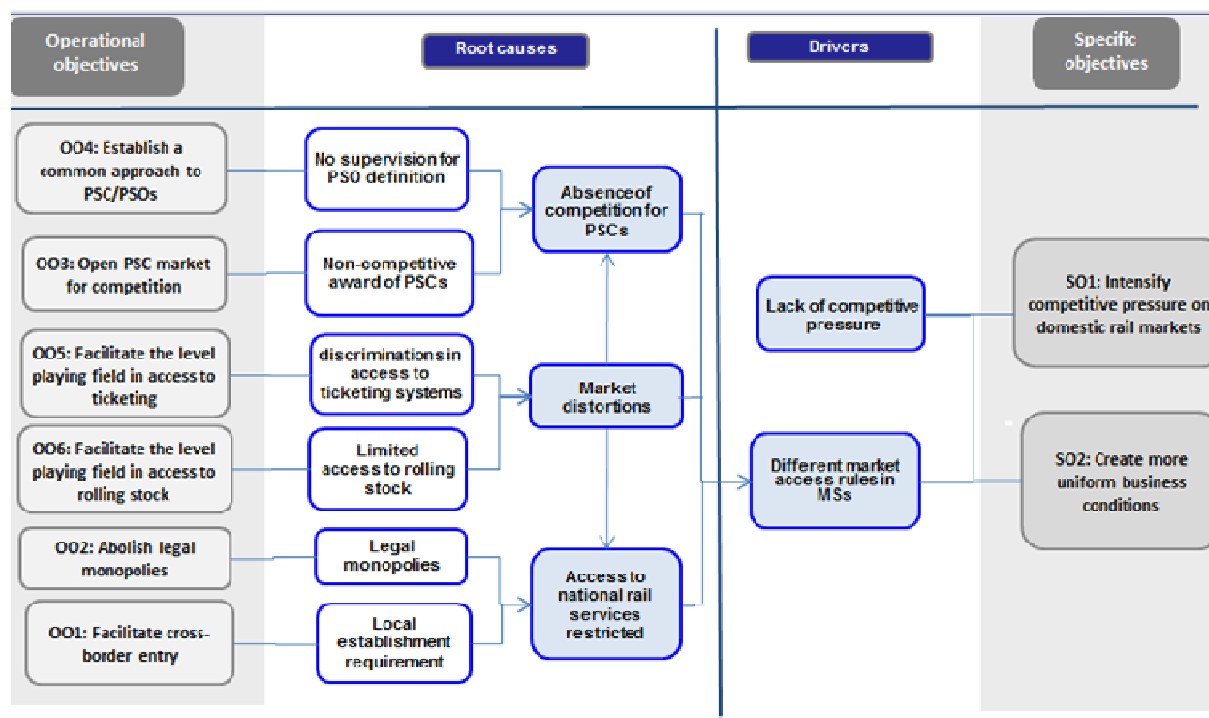
Specific objectives:

1. Intensify competitive pressure on domestic rail markets
2. Create more uniform business conditions

Operational objectives:

1. Facilitate cross-border entry into domestic rail passenger markets
2. Abolish legal monopolies
3. Open PSC market for competition
4. Establish a common approach to control the definition of PSOs and to define public service contracts
5. Facilitate the level playing field in access to ticketing
6. Facilitate the level playing field in access to rolling stock

Mapping drivers, root causes and objectives:



4. POLICY OPTIONS

Taking into account the stakeholders' consultation and the problem analysis, it is possible to identify four broad sets of measures, as detailed in the following table:

Root causes	Respective category of options	Policy options considered	Retained?
Restrictions to provision domestic passenger rail services	A options: Open access	Option A0: Baseline scenario - no open access rights to domestic rail market provided under EU law	✓
		Option A1: Open access with possibility to limit access when the viability of PSC is compromised	✓
		Option A2: Open access limited to routes being commercially viable	
		Option A3: Open access limited to routes not covered by PSCs	✓
		Option A4: Open access unlimited	
Absence of competition for PSCs	B options: Competitive tendering of PSCs	Option B0: Baseline scenario - competent authorities can choose between direct award and competitive tendering	✓
		Option B1: Mandatory tendering with flexibility, PSC scope under the control of national regulatory body	✓
		Option B2: Mandatory tendering with flexibility, PSC scope under the control of the Commission	
Discriminatory access to ticketing	T options: Integration of ticketing	Option T0: Baseline - implementation of the Passenger Rights Regulation and the Recast of the 1 st	✓

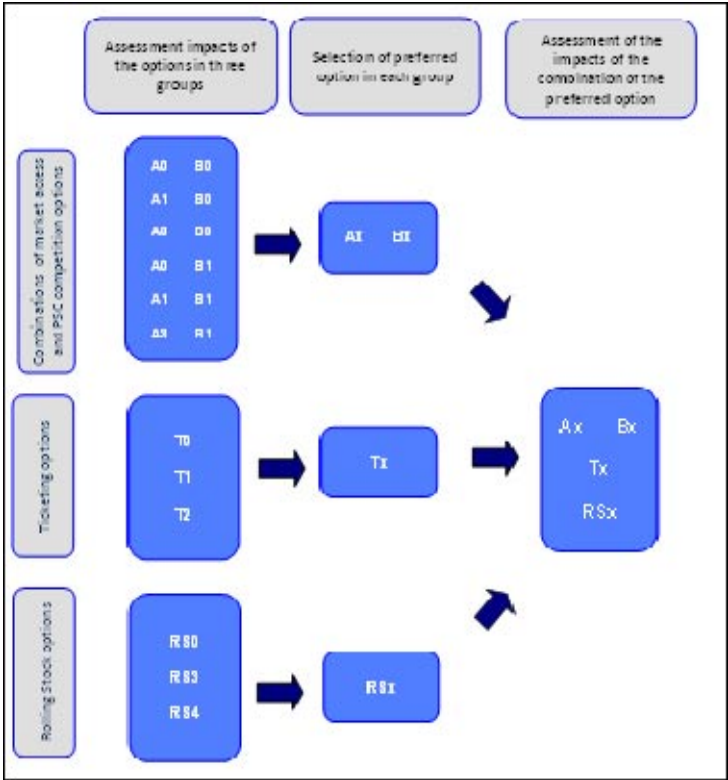
systems	systems	Railway Package	
		Option T1: voluntary national integrated ticketing systems	✓
		Option T2: mandatory national integrated ticketing systems	✓
		Option T3: Integrated EU ticketing system	
Limited access to rolling stock	RS options: Access to rolling stock	Option RS0: Baseline - no specific EU requirements	✓
		Option RS1: Mandatory creation of ROSCOs	
		Option RS2: Mandatory ownership of rolling stock by competent authorities	
		Option RS3: Mandatory selling or leasing of rolling stock by the previous PSC beneficiary	✓
		Option RS4: Obligation for the competent authority to take the financial risks	✓
		Option RS5: Guidelines on best practices on rolling stock	

A and B options are the core measures of the initiative and their combination determines the ambition of market opening. The following combined core options are to be assessed:

- Option 0 (A0, B0) – Baseline scenario
- Option 1 (A1, B0) – Market opening based on 'broad open access', no measures on competitive tendering of PSCs
- Option 2 (A3, B0) – Market opening based on 'limited open access', no measures on competitive tendering of PSCs
- Option 3 (A0, B1) – Market opening based exclusively on competitive tendering of PSCs
- Option 4 (A1, B1) – Market opening based on 'broad open access' and competitive tendering of PSCs
- Option 5 (A3, B1) – Market opening based on 'limited open access' and competitive tendering of PSCs

The essence of the ticketing and rolling stock option consideration is to create framework conditions necessary for more effective application of A and B core policy options.

Core options combined with the preferred options T and RS:



5. ASSESSMENT OF IMPACTS

While the EU rules would create necessary conditions for more effective and uniform rail market functioning, the effectiveness of implementation and consequent impacts depend largely on the situation in each MS and the 'spirit' of transposition and enforcement. Consequently, the analysis of impacts of different options is mostly based on qualitative assessment, with partial quantification, where possible.

The direct *economic, social* and *environmental* impacts that have been identified as potentially most relevant to the policy measures are detailed in the tables below.

Assessment of direct economic and social impacts

	Option 0 Baseline scenario	Option 1 Broad open access only	Option 2 limited open access only	Option 3 Competitive tendering only	Option 4 Broad open access and competitive tendering	Option 5 limited open access and competitive tendering
Direct economic impacts						
Competition	0	+ / ++	+	++	++++	+++
Transport demand	0	+	+	+	++	++
Industry revenues and costs	0	+	+	++	+++	+++
Public funding	0	+	0/+	++	++	+++
Investment in rail	0	+	+	+	++	++
Administrative costs for operators	0	0/+	0/+	--	-	--

Administrative costs for public authorities	0	0	0	--	-	--
Multinational rail activities	0	+	+	+++	++++	++++
Small and medium enterprises	0	0/+	0/+	+	+	+
Direct social impacts						
Passenger fares	0	+	0/+	0	+	0/+
Service quality	0	+	0/+	+	++	++
Employment - rail undertakings	0	0	0	-/+	-/+	-/+
Employment – rail-related sectors	0	+	+	+	++	++
Working conditions	0	-	-	--	--	--
Rail safety	0	0	0	0	0	0

Impact of ticketing options

Impact of ticketing options	T0 Baseline scenario	T1 Voluntary integration	T2 Mandatory integration
Economic impacts			
Competition and other competition-driven impacts	0	++	+
Industry revenues and costs	0	0	-
Transport demand, multinational rail activities	0	0	0
Administrative costs for public authorities	0	0	-
Innovation	0	+	0
Social impacts			
Passenger fares	0	0/+	0/-
Service quality	0	+	0/+

Impact of rolling stock options

	RS1 Baseline scenario	RS3 Mandatory transfer	RS4 Risk for contracting entity
Economic impacts			
Competition and other competition-driven impacts	0	+	++
Public funding	0	-	--
Multinational rail activities	0	+	+
Property rights	0	-	0
Industry revenues and costs	0	0	+
Innovation	0	0/-	0/-
Social impacts			
Safety	0	0	0

6. COMPARISON OF OPTIONS

The following table compares the options in terms of effectiveness, efficiency and coherence.

Comparison of market opening options	Effectiveness ¹		Efficiency				Coherence				Motivation
	S01: Intensify competitive pressure in domestic rail markets	S02: Create more uniform business conditions	Operational efficiency of RUs	Passenger fares	Administrative burdens for operators	Administrative burdens for public authorities	Employment and working conditions (rail)	Employment (rail related sectors)	Social inclusion, customer impacts	Environmental sustainability	
Option 0 Baseline scenario	0	0	0	0	0	0	0	0	0	0	No new bidders would appear for competitive tenders and no improvements in public spending efficiency in rail. Disparity of market structures throughout the MS remains.
Option 1 Broad open access only	+ /+++	+	+	+	0/+	0	0	+	+	0/+	Positive impacts on competitiveness of rail market. However, the measure would not result in a major restructuring of the rail sector and provide for only limited efficiency and administrative gains.
Option 2 Limited open access only	+	+	+	0/+	0/+	0	0	+	+	0/+	Impacts are similar to that of Option 1, but even more limited. PSCs will remain protected from competition with open access operators, so no savings in public funds are assumed.
Option 3 Competitive tendering only	++	+++	++	0	--	--	-/+	+	++	+	Option addresses only the usage of PSCs, and thus only partially improves entry rights. Competitive tendering is expected to result in improved efficiency, especially felt by incumbents. Customer fares will remain the same; administrative burden may increase. Social inclusion and environmental

¹ Effectiveness scores are linked to following categories of economic impacts: competition, use of public funds, demand for rail services/modal share of rail and development of multinational rail activities.

Comparison of market opening options	Effectiveness ¹		Efficiency				Coherence				Motivation
	S01: Intensify competitive pressure in domestic rail markets	S02: Create more uniform business conditions	Operational efficiency of RUs	Passenger fares	Administrative burdens for operators	Administrative burdens for public authorities	Employment and working conditions (rail)	Employment (rail related sectors)	Social inclusion, customer impacts	Environmental sustainability	
Option 4 Broad open access and competitive tendering	++++	++++	+++	+	-	-	-/+	++	++	+/+ +	sustainability are linked to expected slight increase in rail service provision.
Option 5 Limited open access and competitive tendering	+++	++++	++/+ ++	0/+	--	--	-/+	++	++	+/+ +	The most ambitious option addressing both – PSCs and open access – and the most effective in terms of specific objectives. It will promote elimination of monopoly profits of incumbents and create opportunities for new entrants. Reinvesting the saved money in rail sector could provide for additional services. Impacts on employment are linked to industry revenue developments. Option 5 is similar to Option 4, allowing, however, competition between open access rights and PSCs. Fewer benefits are expected in the form of public savings and operational efficiency. Impacts on employment are largely the same as under Option 3.

Comparison of ticketing options	Effectiveness		Efficiency			Coherence	Motivation
	S01: Intensify competitive pressure in domestic rail markets	S02: Create more uniform business conditions	Operational efficiency of RUs	Passenger fares	Administrative burdens for public authorities		
T0 Baseline scenario	0	0	0	0	0	0	Implementation of the Passenger Rights Regulation and the Recast of the 1 st Railway Package would mean marginal improvement.
T1 Voluntary integration	++	0	+	0/+	0	+/-	T1 would achieve less harmonisation of approaches, but leave more room for competition. A voluntary option would maintain a more fragmented market and hinder 'seamless travel'.
T2 Mandatory integration	+	0	0	0/-	-	0/+	Mandatory ticketing systems would provide means for a 'seamless travel' but could reduce margins for price competition. May hamper the possibility of open access operators to develop their own business strategies. Mandatory systems could result in disproportional cost.

Comparison of rolling stock options	Effectiveness		Efficiency		Coherence			Motivation
	S01: Intensify competitive pressure in domestic rail markets	S02: Create more uniform business conditions	Operational efficiency of RUs	Public Funding	Safety	Property rights	Innovation	
RS0 Baseline scenario	0	0	0	0	0	0	0	Access to rolling stock remains a major barrier in many countries, hindering competition.
RS3 Mandatory transfer	+	+	0/-	-	0	-	0/-	RS3 and RS4 both provide for equal level playing field as regards access to rolling stock, increasing the potential number of bidders and harmonising business conditions. Improvement is expected in the efficiency of public funding. Option RS3 adds costs to operators and involves the withdrawal of property of rolling stock from existing incumbents, which may result in possible conflicts.
RS4 Risk for contracting entity	++	+	0/-	--	0	0	0/-	This option would ease access to rolling stock more effectively than RS3, however, given that the financial risks, there will be more pressure on public funds. To minimise costs, contracting authorities might prefer using old rolling stock and this would hinder innovation.

Conclusion

The analysis shows that the following options perform best:

- **Option 4** Market opening based on broad 'open access' and competitive tendering of PSCs
- **T1** Voluntary national integrated ticketing systems
- **RS3** Mandatory transfer of rolling stock or **RS4** Obligation for the competent authority to take the rolling stock related financial risks

As already explained, there is a certain degree of uncertainty in the assessment of impacts of some options, as evidence is sometimes fairly recent (e.g. competition *in* the market) or ambiguous (evidence provided only by specific stakeholders). The choice to move forward with the aforementioned combination remains thus a political choice.

Estimates of the impacts of the preferred policy scenario

A scenario analysis accompanied with sensitivity tests has allowed estimating the potential impacts of the preferred policy scenario. Furthermore, the delivery of the full benefits of market opening is also greatly helped by institutional separation and coordination of infrastructure management, as proposed by another initiative within the 4th Rail Package, resulting in the important following synergies:

Impacts of market opening and infrastructure governance policies

All changes are illustrative estimates	Financial benefits (NPV, € bn)	Increase in passenger km (bn)
Scenario 1 – Focus on saving		
Vertical separation alone	6.6	0.8
Market Opening alone	29.4	2.0
Combination of market opening and vertical separation	43.4	3.8
Scenario 2 – Reinvestment (50% of savings reinvested into rail)		
Vertical separation alone	4.4	1.1
Market Opening alone	21.0	8.4
Combination of market opening and vertical separation	33.8	16.4

While scenario 1 focuses only on financial benefits (consisting mostly of public savings), the scenario 2 would allow to provide 16 billion additional passenger-km (6% increase of passenger-km on top of the baseline developments).

7. MONITORING AND EVALUATION

The Commission will monitor and evaluate the implementation and effectiveness of this legislation through a set of indicator, which is in most cases aligned with those defined in the State Aid Scoreboard, Regulation 1370/2007 and Rail Market Monitoring System².

Specific objective	Indicator
SO1: Intensify competitive pressure in domestic rail markets	<ul style="list-style-type: none"> • Market share of new entrants* (relates to operational objective OO1, OO3) • Rail services covered by PSCs* (relates to OO3 and OO4) • Utilisation of access rights*(relates to OO1, OO2, OO3) • Barriers to more effective rail* (relates to all operational objectives) • Licensing* (relates to OO1, OO2)
SO2: Create more uniform business conditions	<ul style="list-style-type: none"> • Rail services covered by PSCs* • Utilisation of access rights* • Barriers to more effective rail*
Other parameters	
Working conditions	<ul style="list-style-type: none"> • Dynamics of employment* (e.g. increase or decrease in employment) • Social conditions*

* As foreseen in Article 15 of the Recast of the 1st Railway Package

It is planned that five years after the end of the transition period of its legislative proposals, the Commission will evaluate whether the objectives of the initiative have been achieved.

² As reviewed by the Recast of the 1st Railway Package