



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.02.1997
COM(97)34 final

95/0205 (SYN)

Amended proposal for a

COUNCIL DIRECTIVE

amending Directive 91/440/EEC on the
development of the Community's railways

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

On 19 July 1995 the Commission adopted a proposal¹ for a Council directive amending Directive 91/440/EEC on the development of the Community's railways². The purpose of the proposal was to extend the access rights to railway infrastructure provided for in Article 10 of Directive 91/440/EEC, to create access rights for railways undertakings for the purpose of operating international and cabotage services for the transport of goods and for the combined transport of goods, and international services for the transport of passengers.

At its plenary session of 25 October 1996 the European Parliament approved the Commission's proposal, subject to nine amendments. The Commission accepts the amendments to the third and ninth recitals, and to article 10, paragraph 1, of the proposed directive. These amendments strengthen or clarify the original text.

The other amendments either go beyond the scope of the proposal, limited to the extension of access rights, or cover subjects on which the Community is developing policies in other contexts. The Commission, therefore, refuses the following amendments :

- introducing a new recital 5 a.
This links the improvement of the financial situation and the write-off of the debt of railways to the extension of access rights, and so goes beyond the scope of the proposal; in any case, the Commission is presently working on policy in this area.
- introducing a new recital 5 b.
This introduces an obligation to develop Community rules, for all modes of transport, on the internalisation of external costs, respect for working time and the harmonisation of indirect taxation, and so goes beyond the scope of the proposal; in any case the Commission is presently working on policy in these areas.
- introducing a new recital 5 c
This obliges the Commission to ensure that infrastructure managers charge for the use of infrastructure on the basis of uniform criteria, even before the date

¹ COM(95)337 final, 19.07.1995, O.J.N° C 321, 1.12.1995, p. 10.

² Directive 91/440/EEC of 29 July 1991; O.J. N° L 237, 24.08.1991, p. 25.

set for the implementation by the Member States of Council Directive 95/19/EC³ which cover this subject. (27 June 1997). This requirement goes beyond the scope of the proposal and is inconsistent with Directive 95/19/EC;

- modifying recital 6.
This recalls that each mode of transport should be charged for the costs that it imposes, and so goes beyond the scope of the proposal; in any case the Commission is presently working on policy in this area
- modifying article 9.1 and 9.2, first subparagraph, of Directive 91/440/EEC, and introducing a new paragraph 9.1 a
 - modification of article 9.1. This creates an obligation on Member States to help reduce debt and improves finances by the date of transposal of the proposed Directive. This goes beyond the scope of the Commission's proposal. Moreover, article 9.1 already imposes such an obligation, which had to be complied with by 1st January 1993. Consequently, the new date would be a step backward and could create legal uncertainty. The Commission is, in any case, working on policy in this area.
 - introduction of a new paragraph 9.1a. This requires the Member States to ensure that the railways have customary own resources. This goes beyond the scope of the proposal and would create an unclear obligation as there is no customary level of own resources. The Commission is, in any case, working on policy in this area.
 - modification of article 9.2, first subparagraph. This obliges Member States to require the establishment of separate debt amortization units within railway undertakings; article 9.2 of Directive 91/440/EEC allows but does not oblige them to require this. This goes beyond the scope of the proposal; in any case such amortization units are only one means of achieving the end and so should not be obligatory.
- introducing new articles 10.2 a and 10.2 b to Directive 91/440/EEC :
 - introduction of new article 10.2 a. This obliges Member States to ensure, by 1st January 2000, that the railways are not a disadvantage compared to other modes of transport, as regards VAT on cross border transport and other fiscal provisions like duty-free sales. This goes beyond the scope of the proposal, being part of fiscal policy.
 - introduction of new article 10.2 b. This obliges the Commission to report, by 1st January 1998, on plans to further interoperability. This goes beyond the scope of the proposal. In any case, the Council has adopted a directive on the interoperability of high speed rail⁴ and the Commission is to study how far this

³ Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees. O.J. N° L 143, 27.06.1995, p. 75.

⁴ Council Directive 96/48/EC of 23 July 1996, O.J. N° L 235, 17.09.1996, p. 6, on the interoperability of the European high speed train network.

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The Commission's proposal is amended as follows :

Recital 3

Original proposal

Whereas the application to the railways sector of the principle of freedom to provide services needs to take account of the specific characteristics of the sector and to be applied by stages;

Amendment proposal

Whereas the application to the railways sector of the principle of freedom to provide services needs to take account of the specific characteristics of the sector and to take place by stages; and whereas the principle must be applied uniformly as the Directive is implemented by the Member States, in order to avoid distortions of competition in and between the Member States;

Recital 9

Whereas, in the process of liberalization, it is necessary to take account of the contribution of transport services to the internal cohesion of national economies;

Whereas, in the process of liberalization, it is necessary to take account of the contribution of transport services, in particular the socio-economic role of regional rail transport, to the internal cohesion of national economies;

ARTICLE 1, POINT 1
Article 10, paragraph 1

Railway undertakings within the scope of Article 2 shall be granted access and transit rights to the infrastructure in their Member State of establishment and in other Member States on equitable conditions, for the purpose of operating:

Railway undertakings within the scope of Article 2 shall be granted access and transit rights to the infrastructure in their Member State of establishment and in other Member States on equitable, transparent and non-discriminatory conditions, for the purpose of operating :

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