

## Railway transport of passengers: opening to international competition, Rail Market Access. 3rd package

2004/0047(COD) - 24/07/2006 - Council position

The Council has included eight amendments made by the European Parliament, either literally or in principle, in its common position. A central issue of the Council's discussions on the market opening proposal was its relation with the revised proposal on public passenger transport services by rail and by road. Consequently, at a Council meeting of 5 December 2005, a Political Agreement on the Rail Market Access proposal could only be reached by addressing the relation between both proposals and giving guidance to several elements of the Public passenger transport services proposal in a Statement to the minutes made by the Council and the Commission.

The Council, by qualified majority (abstention by Hungary), made some changes to the proposal:

- opening the market for international rail passenger services: by agreeing to grant, by 1 January 2010, the right of access to the infrastructure of all Member States to railway undertakings for the purpose of operating international passenger services, the Council follows the compromise reached with Parliament at the time of the conciliation procedure on the Second Railway Package. However, the Council wants to leave Member States more time to prepare for market opening, by allowing them to grant the right of access by 1 January 2012 at the latest. Consequently, the Council does not agree with Parliament's view to open international rail passenger services by 2008, and all other forms of rail passenger services by 2012. The Council, however, took over the Parliament's proposal of a reciprocity clause that Member States could apply which would open their market before 2010;

- right to pick up and set down passengers in the same Member State: the Council wants to avoid a situation where a right of access for international rail passenger services, which include cabotage, leads to the opening of the market for domestic rail passenger services. Therefore, the Common Position allows granting the right of access only to those international services, which have as a "principal purpose" the carriage of passengers between stations located in different Member States. In the Common Position, a procedure is foreseen for determining the purpose of international service for which access is requested;

- safeguarding public transport services: the Council has added three elements to the Commission proposal: a procedure for determining whether opening the market for international rail passenger services compromises a public transport service; a clarification on the modalities for granting the right of access; and a provision which allows Member States to charge a levy on international rail passenger services. With regard to the procedure, an important element is an objective economic analysis undertaken by the regulatory body of the impact of the international rail passenger service on public transport services. The Council has taken this idea from a Parliamentary amendment;

- framework agreements: like Parliament, the Council feels it necessary to complement the opening of the market for international rail passenger services with arrangements for a more stable and predictable climate for investments in the infrastructure for these services, and in particular for services using specialised infrastructure. Consequently, the Council modifies the provisions with regard to framework agreements in Directive 2001/14/EC. Where the Parliament proposes to allow for services using specialised infrastructure, which require substantial and long-term investment framework agreements with a duration of 10 years, the Council is of the opinion that a 15 years' duration is more appropriate;

- transit: the Common Position clarifies that the transport services of goods and passengers, which begin and end in third countries and which transit Community territory, are not included within the scope of the proposal. Lithuania made a Statement in the minutes on the issue of transit;

- concession based system: the Council is in favour of allowing Member States, for a transitory period, not to provide full open access to international rail passenger services in cases where the right to use certain rail routes has already involved a sufficient test of market value through the principle of competition for the rails.

- exemption from implementation for Malta/Cyprus: taking into account the fact that Malta and Cyprus do not have a railway system, and that the prospects of them having one are very limited, the Council exempts these two Member States from the obligation to implement the Rail Market Access Directive.