

II

(Preparatory Acts)

COMMISSION

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 railways

(2002/C 291 E/01)

COM(2002) 25 final — 2002/0025(COD)

(Submitted by the Commission on 23 January 2002)

EXPLANATORY MEMORANDUM

The completion of an integrated market for rail freight services is a cornerstone of the transport policy vision sketched out in the White Paper on the common transport policy at the horizon of 2010 published in September 2001. A revitalisation of the rail freight sector is needed in order to render it capable of absorbing a higher share of the future increase of freight transport demand. The objective is not to increase the market share of rail against market forces but rather to use market forces to improve its competitiveness in those market segments where rail has a comparative advantage. The Commission believes that opening the rail freight markets will unleash the competition that is necessary to provide market actors with the necessary incentives to become more efficient and more competitive, as well as to do business closer to the customer. It should attract new capital and enterprises, stimulate the development of new services responding to the requirements of the customers and to improve the financial situation of the railway undertakings. This is necessary if the rail system shall be made capable of contributing to a better performing European freight transport sector in the future.

Although some progress has been made with advancing the Single Market project for rail freight, the process is clearly behind other transport modes, in particular road and air transport with which the railways are in competition. In 1995, the Commission made a proposal to open up freight and passenger rail networks in the EU which did find a follow-up. At that time the regulatory framework for the rail sector was not yet sufficiently complete (e.g. related to safety and interoperability) in order to ensure an efficient functioning of open markets. It has been recognised that the railway market should be integrated in steps due to its special features.

The application of the principle of freedom to provide services implies rights of access to rail infrastructure for railway undertakings established and licensed in the European Union. Directive 91/440/EEC made a first step in this direction by establishing rights of access for international groupings and railway undertakings to operate international combined transport. Directive 2001/12/EC established access rights to the Trans-European Rail Freight Network and at latest from 2008 onwards to the whole European rail freight network for international services.

The Commission considers that there are many arguments in favour of an acceleration of this process. The recent decisions have created a dynamic on the market and new expectations from shippers, operators and potential investors.

These expectations have also been encouraged by the position clearly expressed by the European Parliament in favour of the full opening of the freight market at the time of the conciliation with the Council on the infrastructure package in November 2000 and the formal request made to the Commission to come quickly with new proposals to this effect. It has been followed by the Conclusions of the Stockholm European Council in March 2001 reaffirming the need to complete the internal market in transport, having rail in mind. The prospect of enlargement should also be considered.

It is thus time to prepare the next step of market integration, the opening of domestic rail freight markets (i.e. regular domestic services by a foreign railway undertaking) including the possibility of cabotage (i.e. occasional domestic services while performing international services).

Access to rail freight networks for domestic services by railway undertakings other than the national operator is already possible in a number of Member States such as Austria, Italy, Germany, the Netherlands, Sweden, and the UK as well as in Switzerland, on the basis of national law. The experience with the effects of market opening on competitiveness and service innovation are generally positive.

A number of positive experiences demonstrates the need to accelerate the process and to allow further innovation in the services to be provided:

- new alliances between historical and new operators of countries like Italy, Switzerland, Germany, Austria, Netherlands are being created to operate on international corridors, particularly to carry goods through the Alps and their operations would gain from the full opening of the market by allowing them to integrate international and domestic services in a comprehensive logistic chain;
- there is, as witnessed in Germany, many new railway undertakings which are willing to complement the activities of the main carriers which want to streamline their business. These small operators should operate feeder lines on the network and should not be limited in their possibility to expand across borders or through alliances with other companies;
- the IKEA plans to create shuttles throughout Europe to feed its shops and warehouses, with a first line between Sweden and Duisbourg in Germany, would remove many more trucks from road if these international shuttles can be smoothly integrated with further national rail journeys to their final destination;
- in spite of the problems encountered by the infrastructure manager, the UK rail freight transport has increased regularly since 1994.

Hence, the current proposal stipulates that all railway undertakings established and licensed in the European Union will be granted access to the railway network for domestic and international rail freight services from the date of implementation of this Directive onward. The concept of limiting access for international rail freight services to the Trans-European Rail Freight Network (TERFN) that was in any case only a transitory arrangement until 2008 at the latest will be repealed. Therefore, this proposal deletes all references to the TERFN.

The provisions in Directive 91/440/EEC as amended by Directive 2001/12/EC that relate to railway safety are deleted in this proposed amendment to avoid any overlap with the proposed directive on railway safety.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social
Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty,

Whereas:

(1) Directive 91/440/EEC of 29 July 1991 on the development
of the Community's railways⁽¹⁾ provides that licensed
railway undertakings are granted access rights on the trans-
European Rail Freight Network and at the latest from 2008
on the whole network for international rail freight services.

(2) The extension of those access rights to all kind of rail
freight services, in accordance with the principle of
providing services, would improve the efficiency of the
rail mode relative to other modes of transport. It would
also facilitate sustainable transport between and within
Member States, by encouraging competition and allowing
entry of new capital and enterprises.

(3) Rail freight services offer considerable opportunities for the
creation of new transport services and the improvement of
existing ones at national and at European level.

(4) To be fully competitive, rail freight transport increasingly
requires the provision of comprehensive services, including
transport between and within Member States.

(5) The extension of access rights to all kind of rail freight
services requires to repeal the provision limiting access
for international rail freight services to the Trans-European
Rail Freight Network (TERFN) that was in any case
conceived for a transitory period. Therefore, this proposal
deletes all references to the TERFN.

⁽¹⁾ OJ L 237, 24.8.1991, p. 25. Directive as amended by Directive
2001/12/EC (OJ L 75, 15.3.2001, p. 1).

(6) Since railway safety is regulated by Directive .../.../EC of the European Parliament and of the Council of [date] on the regulation of safety and investigation of accidents and incidents on the Community's railways as part of a new coherent Community regulatory framework for the railway sector, the provisions on safety contained in Directive 91/440/EEC should be deleted.

(7) Directive 91/440/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/440/EEC as amended by Directive 2001/12/EC is amended as follows:

1. In Article 3 the fifth indent is deleted.
2. In Article 7 paragraph 2 is deleted.
3. Article 10 is amended as follows:
 - (a) Paragraph 2 is replaced by the following:

'2. Railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, access to the infrastructure in all Member States for the purpose of operating rail freight services and combined transport goods services.'
 - (b) Paragraph 3 is deleted.
 - (c) Paragraph 5 is replaced by the following:

'5. Any railway undertaking engaged in rail transport services under paragraphs 1 and 2 shall conclude the necessary administrative, technical and financial agreements on the basis of public or private law with the infrastructure managers of the railway infrastructure used with a view to regulating traffic control and safety issues concerning that transport. The conditions governing such agreements shall be non-discriminatory and, if applicable, in conformity with the provisions of

Directive 2000/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (*).

(*) OJ L 75, 15.3.2001, p. 29.'

(d) Paragraph 8 is deleted.

4. Article 10a is deleted.

5. In Article 10b(4), point (c) is replaced by the following:

'(c) the state of the European railway network'

6. Annex I is deleted.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after the entry into force of this Directive] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.