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Activities of the European Commission in rail transport

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Fourth Railway Package – Market Pillar

The objective of European Union's policy for rail is to create a single European railway area and to increase the competitiveness of rail transport by improving the quality and cost-effectiveness of services. The EU has been working towards this objective since the 1990s, and adopted several legislative railway packages, until the legal framework was recast through Directive 2012/34/EU establishing a Single European Rail Area.

In December 2016, the 4th Railway Package was adopted, which included inter alia:

- Regulation (EU) 2016/2338 amending Regulation (EU) 1370/2007, which deals with the award of public service contracts for domestic passenger transport services by rail ('PSO Regulation');
- Directive 2016/2370/EU amending Directive 2012/34/EU, which deals with the opening of the market of domestic passenger transport services by rail and the governance of the railway infrastructure ('Governance Directive').

The secondary legislation adopted on the basis of Directive 2012/34/EU covers various areas: new passenger rail services; criteria for applicants to capacity; noise differentiated track access charges; modalities for the calculation of the cost; framework agreements; licensing; data collection for rail market monitoring; access to service facilities.

Last year, the Commission adopted Commission Implementing Regulation (EU) 2018/1795 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU. It defines under which conditions EU Member States can restrict access to domestic rail infrastructure where a new open access service would endanger the economic equilibrium of a public service contract. The regulation sets out the details of the procedure and criteria to be followed for the economic equilibrium test. Member States' Rail Regulatory Bodies have the responsibility to determine whether the economic equilibrium of a public service contract is being compromised by a new rail passenger service.

In February 2019, the Commission adopted the sixth edition of its Rail Market Monitoring Survey (RMMS) report, to be presented to the European Parliament and the Council every two years, providing a comprehensive analysis of the EU rail markets' developments. Background information and data may be found on the European Commission's website in: https://ec.europa.eu/transport/modes/rail/market/market_monitoring_en.

The Commission is currently evaluating the Implementing Regulation (EU) 2015/429, setting out the modalities to be followed for the charging of the cost of noise effects, the so-called noise-differentiated track access charges. (NDTAC). A support study, with a significant input from the sector, is expected to be finalised in October 2019. In the coming months the Commission will decide on a possible revision of the Implementing Regulation.

In order to promote a level playing field in the provision of rail services, the Commission adopted Commission Implementing Regulation (EU) 2017/2177, which aims at providing transparency on conditions for access to service facilities and rail related services and information on charges. The Commission funded a project to develop a GIS web-based portal (<https://railfacilitiesportal.eu/>), which allows rail service facility operators to upload the descriptions of their facilities on the internet in a single system – a pre-requisite for enabling rail operators to access and use service facilities on a non-discriminatory basis. The focus is on facilities located in the EU and along the EU rail freight corridors, but the Portal can also include information on rail facilities in third countries.

Fourth Railway Package – Technical pillar

The technical pillar of the 4th Railway Package will enhance rail interoperability and safety in Europe, in particular through *inter alia* an enhanced role of the European Union Agency for Railways (ERA), a renewed framework for railway safety aiming at promoting the safety culture, an increased harmonisation at EU level to improve railway interoperability. The technical pillar was adopted in May 2016 includes three legislative acts:

- Regulation (EU) 2016/796 on the European Union Agency for Railways and repealing Regulation (EC) n° 881/2004;
- Directive (EU) 2016/797 on the interoperability of the rail system within the European Union (Recast of Directive 2008/57/EC);
- Directive (EU) 2016/798 on railway safety (Recast of Directive 2004/49/EC).

As of 16 June 2019, ERA started its role as EU authorising and certifying authority. The first vehicle authorisation was issued on 5 July 2019 and the first single safety certificate was issued on 16 September 2019. Currently main flow of applications concerns authorisation of vehicles conform to a type.

With the publication of remaining implementing acts on 27 May 2019 the Commission completed the adoption of the 4th Railway Package technical pillar legal framework:

1. Commission Delegated Decision (EU) 2017/1474 of 8 June 2017 supplementing Directive (EU) 2016/797 of the European Parliament and of the Council with regard to specific objectives for the drafting, adoption and review of technical specifications for interoperability (OJ L 210, 15.8.2017, p. 5–15);
2. Commission Implementing Regulation (EU) 2018/278 of 23 February 2018 amending the Annex to Regulation (EU) No 1305/2014 as regards the structure of the messages, data and message model, Wagon and Intermodal Unit Operating Database, and to adopt an IT standard for the communication layer of the Common Interface (OJ L 54, 24.2.2018, p. 11–13);

3. Commission implementing Regulation (EU) 2018/545 of 4 April 2018 establishing practical arrangements for the railway vehicle authorisation and railway vehicle type authorisation process pursuant to directive (EU) 2016/797 of the European parliament and of the Council (OJ L 90, 6.4.2018, p. 66–104);
4. Commission delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012 (OJ L 129, 25.5.2018, p. 16–25);
5. Commission delegated Regulation (EU) 2018/762 of 8 March 2018 establishing common safety methods on safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulations (EU) No 1158/2010 and (EU) No 1169/2010 (OJ L 129, 25.5.2018, p. 26–48);
6. Commission implementing Regulation (EU) 2018/763 of 9 April 2018 establishing practical arrangements for issuing single safety certificates to railway undertakings pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, and repealing Commission Regulation (EC) No 653/2007 (OJ L 129, 25.5.2018, p. 49–67);
7. Commission implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (OJ L 129, 25.5.2018, p. 68–72);
8. Commission implementing Regulation (EU) 2018/867 of 13 June 2018 laying down the rules of procedure of the Board(s) of appeal of the European Union Agency for Railways (OJ L 149, 14.6.2018, p. 3–15);
9. Commission Implementing Regulation (EU) 2018/868 of 13 June 2018 amending Regulation (EU) No 1301/2014 and Regulation (EU) No 1302/2014 as regards provisions on energy measuring system and data collecting system (OJ L 149, 14.6.2018, p. 16–23);
10. Commission implementing Decision (EU) 2018/1614 of 25 October 2018 laying down specifications for the vehicle registers referred to in Article 47 of Directive (EU) 2016/797 of the European Parliament and of the Council and amending and repealing Commission decision 2007/756/EC (OJ L 268, 26.10.2018, p. 53–91);
11. Commission implementing Regulation (EU) 2019/250 of 12 February 2019 on the templates for ‘EC’ declarations and certificates for railway interoperability constituents and subsystems, on the model of declaration of conformity to an authorised railway vehicle type and on the ‘EC’ verification procedures for subsystems in accordance with Directive (EU) 2016/797 of the European Parliament and of the Council and repealing Commission regulation (EU) no 201/2011 (OJ L 42, 13.2.2019, p. 9–24);
12. Commission implementing Regulation (EU) 2019/772 of 16 May 2019 amending Regulation (EU) No 1300/2014 as regards inventory of assets with a view to identifying barriers to accessibility, providing information to users and monitoring and evaluating progress on accessibility (OJ L 139i , 27.5.2019, p. 1–4);
13. Commission implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union and repealing Decision 2012/757/EU (OJ L 139i , 27.5.2019, p. 5–88);

14. Commission Implementing Regulation (EU) 2019/774 of 16 May 2019 amending Regulation (EU) No 1304/2014 as regards application of the technical specification for interoperability relating to the subsystem ‘rolling stock — noise’ to the existing freight wagons (OJ L 139I , 27.5.2019);
15. Commission Implementing Regulation (EU) 2019/775 of 16 May 2019 amending Regulation (EU) No 454/2011 as regards Change Control Management (OJ L 139I , 27.5.2019, p. 103–107);
16. Commission implementing Regulation (EU) 2019/776 of 16 May 2019 amending Commission Regulations (EU) No 321/2013, (EU) No 1299/2014, (EU) No 1301/2014, (EU) No 1302/2014, (EU) No 1303/2014 and (EU) 2016/919 and Commission implementing Decision 2011/665/EU as regards the alignment with Directive (EU) 2016/797 of the European Parliament and of the Council and the implementation of specific objectives set out in Commission delegated Decision (EU) 2017/1474 (OJ L 139i , 27.5.2019, p. 108–311);
17. Commission implementing Regulation (EU) 2019/777 of 16 May 2019 on the common specifications for the register of railway infrastructure and repealing implementing Decision 2014/880/EU (OJ L 139i , 27.5.2019, p. 312–355);
18. Commission implementing Regulation (EU) 2019/778 of 16 May 2019 amending Regulation (EU) No 1305/2014 as regards change control management (OJ L 139i , 27.5.2019, p. 356–359);
19. Commission implementing Regulation (EU) 2019/779 of 16 May 2019 laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 445/2011 (OJ L 139i , 27.5.2019, p. 360–389);
20. Commission recommendation (EU) 2019/780 of 16 May 2019 on practical arrangements for issuing safety authorisations to infrastructure managers (OJ L 139i , 27.5.2019, p. 390–405).

ERTMS

The European Rail Traffic Management System (ERTMS) is a major industrial programme to harmonise the automatic train control and communication system and underpin interoperability throughout the rail system in Europe. Deployment of ERTMS will provide the backbone for a digital, connected Single European Rail Area.

As of 2018 the Connecting Europe Facility (CEF) has provided financial support for 69 ERTMS actions, including:

- 52 actions under the dedicated ERTMS Call priority. They receive a total CEF Transport funding of EUR 1.2 billion, including EUR 1.1 billion identified as pure ERTMS deployment funding;
- 17 actions under the Core Network Corridors Call priority. They contribute, among others to the deployment of ERTMS, and receive a total CEF Transport actual funding of EUR 3.4 billion, including EUR 88.3 million identified as pure ERTMS deployment funding.

An innovative CEF Blending Facility was launched in 2019 to combine private financing and European support, with up to EUR 100m available for ERTMS.

European Rail Network for Competitive Freight

In addition to its general railway policy and legislation (railway packages), the European Union adopted in 2010 Regulation (EU) No 913/2010 concerning a European Rail Network for Competitive Freight. The Regulation requests Member States to establish international market-oriented Rail Freight Corridors with the view to:

- Strengthening co-operation between Infrastructure Managers on key operational aspects (e.g. allocation of path, deployment of interoperable systems and infrastructure development);
- Giving adequate capacity and priority for freight in line with market needs and ensuring that common punctuality targets for freight trains are met;
- Promoting intermodality between rail and other transport modes by integrating terminals into the corridor management and development.

The implementation of international rail freight corridors forming is conducted in a manner consistent with the development of the Trans-European Transport Network (TEN-T) and the European Railway Traffic Management System (ERTMS) corridors.

There are currently 11 Rail Freight Corridors (RFCs). In addition to the 9 initial RFCs provided for in Regulation (EU) No 913/2010, the Commission approved in 2017 the creation of the 'Amber' rail freight corridor stretching across the territory of Poland, Slovakia and Slovenia (Commission Implementing Decision (EU) 2017/177). The Amber rail freight corridor became operational in 2019. In March 2018, the Commission also approved the proposal of Austria, Bulgaria, Croatia, Serbia and Slovenia to create the 'Alpine-Western Balkan' rail freight corridor (Commission Implementing Decision (EU) 2018/500). The memorandum of understanding signed by the countries along the rail freight corridor indicates that they aim to make it operational by the end of March 2020. More information and maps may be found on RailNetEurope's website: <http://www.rne.eu>.

In 2019, the Commission launched an evaluation of Regulation (EU) 913/2010, which should be completed in 2020. The evaluation will include an evaluation study by an independent contractor and an open public consultation accessible via the Commission's website (https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1375253_en).

Rail Security

Europe needs a modern rail security system that is based on risk-assessment, and that allows a prompt and proportionate response to emerging threats whilst keeping rail services accessible. This is why the Commission adopted in June 2018 a rail security action plan listing seven concrete measures aiming at improving passenger railway security. The implementation of this plan is currently ongoing and benefits from the work of the "EU Rail Passenger Security Platform".

Established by the Commission in 2018, this Platform gathers Member States' authorities competent in the field of rail security as well as interested stakeholders. Its primary purpose is to develop non-mandatory guidance documents on rail security and help Member States coordinate their actions. Since its entry into operation, the Platform has endorsed a new methodology for rail security risk-assessment. By the end of 2019, it is expected to complete the adoption of good practices on security and detection technologies adapted to railways and of good practices on the mitigation of insider threats in the rail sector.

Through the Platform, the Commission has also engaged with Member States and stakeholders on a number of other important issues delivering on the June 2018 action Plan.

These include the communication with passengers in the event of security incidents, rail security management and planning as well as appropriate mechanisms to share rail security information at national level. This work will continue through 2020.

Transport Community: rail strategy in the Western Balkans

The Transport Community is an international organisation established by the Treaty establishing the Transport Community, which was signed in 2017 and ratified by the European Union and six Western Balkan partners (Republic of Albania, Bosnia and Herzegovina, Republic of North Macedonia, Kosovo¹, Montenegro and Republic of Serbia). Its key objective is to achieve the integration of the Western Balkan region with the EU transport market. It applies in the field of road, rail, inland waterway and maritime transport.

The Transport Community is based on the progressive integration of transport markets and networks on the basis of the relevant EU legislation, including in the areas of technical standards, interoperability, safety, security, traffic management, competition, social policy, public procurement and environment. It shall develop a rolling work plan for the development of the indicative extension of the trans-European transport networks to the Western Balkans, identifying priority projects of regional interest. The Transport Community is supported by a Permanent Secretariat, based in Belgrade, Serbia.

On 2 February 2018, the Commission adopted a Communication on a credible enlargement perspective for and enhanced EU engagement with the Western Balkans and called for a new rail strategy to bring the Western Balkans.

To meet this objective, the six regional partners adopted on 10 December 2018 a Joint declaration for a new Regional Rail Strategy in the Western Balkans, endorsed by Transport Ministers and representatives of the Western Balkans parties, meeting in Brussels at the occasion of the second Ministerial Council of the Transport Community.

In this declaration, the Western Balkans partners formulated the joint objective *“to develop and implement an enhanced rail strategy across the South East European Parties, in the framework of the Transport Community, with the view to boosting international rail transport services, for both freight and passengers, within and across the Western Balkans, with priority focus on extended rail TEN-T Network”*.

At the Western Balkans Summit in Poznan in July 2019, the EU confirmed its commitment to strengthen cooperation with the region and to support the new regional rail strategy.

The stated objective is to develop a comprehensive action plan to revitalise the rail system in the region and bring it closer to EU standards, in line with the Transport Community's objectives. The action plan should focus on key priorities, including: rail market opening, development of rail freight corridors, improvement of the maintenance and the alignment of the rail legislation on interoperability with the EU legislation. Within the framework of the Transport Community, a dedicated Technical Committee on Railways was established to bring together the relevant expertise and coordinate the development and implementation of the regional rail action plan, with the assistance of the Permanent Secretariat.

The Permanent Secretariat is operational since May 2019 and three technical committees have been set up and already met. In addition to the rail technical committee it is worth to mention the committee on transport facilitation, which also covers the improvement of the functioning of rail Border Crossing Points.

¹ This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

All information published by the Permanent Secretariat can be found here:
https://ec.europa.eu/transport/themes/international-relations/enlargement/transport-community_en.

Group of Experts towards Unified Railway Law

Several EU Member States and the Commission participate in the activities of the Group of Experts towards Unified Railway Law (URL) established by the UN ECE Inland Transport Committee and reporting to the Sub Committee No 2 (Working Party on Rail Transport).

At its 80th session in February 2018, the Inland Transport Committee approved the extension of the mandate of the Group of Experts until October 2019 under new Terms of Reference, which provide inter alia that the group should draft a document or system of documents that could be proposed for adoption as a legally binding instrument (possibly an international convention), taking into account the draft URL legal provisions on the contract of carriage already prepared by the Group.

To support the deliberations within the group, the Commission submitted a formal document ECE/TRANS/SC.2/GEURL/2019/5 at the 19th session in April 2019, which underlined the importance of developing URL using a pragmatic and step-by-step approach. Considering the needs expressed by the industry and taking into account the draft URL legal provisions on the contract of carriage, the paper analyses the opportunity and benefits of adopting a URL Contract of Carriage's Convention, as a first step.

The stated objective is to create a rapid positive impact on the efficiency and competitiveness of Euro-Asia rail freight transport by creating a single legal and liability regime as an optional alternative to the current obligation to comply with the two existing regional regime, CIM (OTIF) / SMGS (OSJD); the new Convention would not conflict with the existing regimes as it would be applicable only when neither CIM nor SMGS rules apply for the contract covering the entire journey (so-called interface law).

This approach was supported by a majority of experts in the group and was considered an important initial step towards the harmonisation of rail transport law at global level.

More detailed information is available using the following links:

<http://www.unece.org/fileadmin/DAM/trans/doc/2019/sc2/ECE-TRANS-SC2-GEURL-2019-05e.pdf>;

http://www.unece.org/fileadmin/DAM/trans/doc/2019/sc2/EC_-_presentation.pdf.