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Item 9 of the provisional agenda

**DETERMINATION OF RAILWAY INFRASTRUCTURE CAPACITY INCLUDING
ASPECTS RELATED TO THE FEE FOR THE USE OF THE INFRASTRUCTURE***

Note by the secretariat

1. At its fifty-ninth session, the Working Party asked the secretariat, in collaboration with EC DG TREN, to continue providing information, at its future sessions, on the progress made in implementation of Directive 2001/14/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.

2. This Directive was further modified by Commission Decision 2002/844/EC, Directive 2004/49/EC of the European Parliament and of the Council and by its Corrigendum on safety on the Community's railways.

* The UNECE Transport Division has submitted the present document after the official document deadline due to resource constraints.

3. The Commission has issued a Report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, in May 2006 on the implementation of the first railway package. It has also submitted a Commission staff working document which contains Annexes on the implementation of the railway infrastructure package Directives ('First Railway Package').

4. The text that follows is reproduced with the consent of the EC.

“First Railway Package: implementation in Member States finally on track”¹

5. Correct implementation of EU legislation is one of the main priorities of the Commission. Three years after the deadline to transpose the European Directives of the 1st railway package, the European Commission reports today on concrete implementation in the Member States. Adopted in 2001, this legislative package is the first step aimed at reviving the railways by gradually creating a “railway area” which is integrated at a European level, in particular opening rail freight markets and to specify the conditions under which railway undertakings can access the railway infrastructure. The report concludes that legal implementation is completed; however, efforts have to be enhanced in some countries to ensure an effective regulatory framework and the satisfactory functioning of the rail service market. Member States must also complete the restructuring of their railway undertakings and adapt them to the new, open and competitive market context in the European Union.

6. Vice-President Jacques Barrot in charge of Transport said: “Implementation of the first railway package is crucial for revitalizing the EU railway sector. Together with the 2nd railway package of 2004, the basic regulatory framework is now in place. Market integration in the rail freight sector already shows positive results in some Member States – we have witnessed new market entry and improved traffic performance. The modal share of rail freight has stabilized in Europe. It gives me hope for the future. The changes which have been started must now be completed in order to put the finishing touches to a European railway area which will serve European mobility and competitiveness.”

7. Concerning the legal implementation of the 1st railway package,² the report underlines that Member States have to ensure the strict neutrality of the company or body responsible for granting non-discriminatory access to the railway network. In this respect the Commission considers that a strict institutional separation between infrastructure management and rail service provision is one option to ensure the required neutrality. However, other options such as a holding structure are compatible with EU legislation as long as the organisational and decision-making independence of the infrastructure manager is guaranteed through appropriate arrangements. In order to provide maximum transparency, non-discrimination and contribute to

¹ Press release IP/06/881, 29 June 2006: 1st Railway Package: implementation in Member States finally on track.

² The first railway package includes Directives 2001/12/EC, 2001/13/EC and 2001/14/EC which were adopted in 2001.

legal certainty the Commission's services will assess the variety of solutions put in place by Member States, using a number of criteria defined in a working document:

http://europa.eu.int/comm/transport/rail/overview/infrastructure_implementation_en.htm

8. Member States must also endow their rail regulatory bodies and safety authorities with appropriate resources, competences and expertise. It is only in this way that they can function effectively to ensure non-discriminatory access to the network and a high level of safety. The full independence of these institutions is a key factor for their credibility.

9. For rail infrastructure charging, the report underlines the need to take the infrastructure charges for other modes into account. Rail infrastructure charges should be set at a level corresponding to the actual costs caused by rail traffic and should not be used for cross subsidies between freight and passengers.

10. The Commission also assesses trends in employment in the railway sector. After years of decrease mainly due to loss of competitiveness and to restructuring efforts to increase productivity, employment has recently been levelling off and new employment has even been created in newly set up railway companies and rail related services providers. In the future, efforts have to be reinforced to ensure an adequate level of training of the railway staff on open and integrated markets.

11. Finally the development of safety indicators for rail transport is very favourable. They show that the number of dead and wounded in rail accidents, which is already very small compared to other transport modes, is constantly diminishing while traffic volumes grow.

12. The report adopted today was drafted following extensive consultations with stakeholders and is also based on the findings of a number of independent, external studies.”

13. Annex 8 of the report looks at the application of the infrastructure charging principles introduced by the Directive 2001/14/E C. The report notes that the charges in the Member States vary considerably. The charge for a 1000 ton train was found to be less than 1 € per train-kilometre in the Netherlands, Belgium and France in 2004. Infrastructure managers in Poland and Slovakia levied more than 5 € per train-kilometre. Track access charges in the Baltic States were higher. Similar divergences exist for passenger trains, where France and UK charge more than 3 € per train-kilometre, while several other infrastructure managers fixed charges are less than 1 € per train kilometre. When analysing the share of infrastructure expenses recovered from infrastructure charges, a large spread of cost recovery rates were found: Whilst for Finland and Sweden they are below 20%, they are at, or well above, 60% in Hungary, the Czech Republic and Poland.

14. The quality of the networks, even though difficult to compare in quantitative terms, have similar problems: Infrastructure managers in the new Member States have not been in a position

to keep it to previous standards, and this contrasts with the level of charges raised in these countries.

15. The report also notes that despite the great progress already achieved, some problems in today's charging regimes remain: charges must not discriminate between railway undertakings and should be transparent. Discriminatory elements were removed, often under pressure of the courts, or they are being removed soon. However, in comparison to the provision of electricity, the situation for services provided by the infrastructure manager is less transparent and disparate.

16. The Member States determine the main charging principles on the basis of Directive 2001/14/EC, but it is up to the infrastructure manager to set the charges. Many infrastructure managers still have difficulties establishing their role as independent business units, in light of their traditional function and role within the (integrated) railway undertakings. Due to tighter budgets, the Member States are less and less willing to make financial contributions to their infrastructure manager, whereas Directive 2001/14/EC requires the accounts of the infrastructure manager to be in balance.

17. The consequences of a reduction in revenues and the resultant quality of the infrastructure are often not recognized. At the same time, infrastructure managers are reluctant to claim their rights and resist the demands of the state, which is their only shareholder. As a result, access charges are used as a vehicle to cross-subsidize between freight to passenger transport. Where the infrastructure manager is not independent from a railway undertaking the state must designate a charging body. However the administrative capacity of these charging bodies may not always allow them to fully assume the role.

18. The performance of infrastructure managers is difficult to assess, and they are more than reluctant to reveal quantitative information. Where data exists, as in the case of a UIC study, it is anonymous. Moreover, balancing accounts and increasing efficiency are both recognized in EU law, but still they are difficult to reconcile.

19. Each Member State must create a Regulatory Body under the terms of Article 30 of Directive 2001/14/EC. This Regulatory Body must determine whether charges are calculated according to the rules decided under national legislation, and it acts as an appeal body in case a railway undertaking feels the charging regime applied by the infrastructure manager is not compliant with those rules.

20. As a minimum, the charges have to cover the costs of operation. On the other hand, an upper limit of the charging cost must be respected when setting the mark-ups. Many infrastructure managers find it difficult to calculate these costs, or they fail to reach agreement with their regulatory bodies on the charging principles. This applies to both setting the costs of operation as the lower bound and for full cost as upper bound. In the latter case, asset valuation impacts sharply on the level of charges, due to the long lifetime of rail assets, and it is thus a source of conflicts.

21. Generally, infrastructure managers do not include external cost in their charges. Directive 2001/14/EC only allows charging for external costs if competing transport modes do the same. In the meantime, only a few infrastructure managers make use of the option to differentiate charges

according to different external costs. Where trains use diesel traction, several Member States charge fuel tax. However, given the potential to reduce noise, e.g. by means of different brake systems for freight wagons or exhaust treatment for diesel engines, there is room to create incentives for a more environmentally friendly rail system.
