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**COMMUNICATION FROM THE COMMISSION
ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS**

**APPLICATION OF DIRECTIVE 91/440/EEC
FUTURE MEASURES TO DEVELOP THE RAILWAYS**

**Proposal for a
COUNCIL DIRECTIVE**

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

(presented by the Commission)

COMMUNICATION ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS

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INTRODUCTION

1. Since the approval of Directive 91/440/EEC on the development of the Community's railways⁽¹⁾, a number of changes have occurred in the structure and organization of the railways in the European Community. In the light of these changes and the requirement in the directive to report on its application, the Commission has prepared a general paper on the railways covering the following issues:
 - PART 1 Report on the application of Directive 91/440/EEC on the development of the Community's railways;
 - PART 2 Future measures to develop the railways;
 - PART 3 Proposal for a Council Directive amending Council Directive 91/440/EEC on the development of the Community's railways.
2. The Commission's recent White Paper on the development of the Common Transport Policy⁽²⁾ identified a number of areas where the Community is already active and others where action is planned. Among the subjects on which the Commission has already issued proposals are:
 - the creation of a Community licence for railways and the establishment of principles for the allocation of infrastructure capacity and charging of infrastructure fees⁽³⁾;
 - trans-European networks, notably in relation to the Edinburgh growth initiative⁽⁴⁾;
 - inter-operability of high-speed trains⁽⁵⁾;

⁽¹⁾ Directive 91/440/EEC on the development of the Community's railways. OJ No L 237, 24.8.1991, p. 25.

⁽²⁾ The Future Development of the Community Transport Policy. COM(92) 494 final.

⁽³⁾ Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings. Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees. OJ No L 143, 27.6.1995, pp. 70 and 75.

⁽⁴⁾ Proposal for a European Parliament and Council Decision on Community guidelines for the development of the trans-European transport network. COM(94)106 of 7 April 1994.

⁽⁵⁾ Proposal for a Council Directive on the interoperability of the European high-speed train network. COM(94) 107 of 15 April 1994.

- research in the field of railways, notably in relation to control command systems, infrastructure costing and evaluation and transfer equipment for combined transport (Fourth Framework Programme).

In addition the Commission is engaged in a general review of the fundamental issue of external costs in transport. This question, which is of considerable importance for the future competitiveness of the railways, will be the subject of a green paper. In view of the potential role of the railways in ensuring sustainable mobility in the Community and of the need better to integrate transport services, the Commission is also working on the preparation of a paper on the Citizens Network, intended to address the problems of maintaining adequate and efficient public passenger services throughout the Community. This comprehensive package is likely to be of considerable importance in realizing the potential of the railways, and the proposal that is included in this communication should be seen in this wider framework.

PART 1

THE APPLICATION OF DIRECTIVE 91/440/EEC ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS

1. The principal measures contained in Directive 91/440/EEC were:
 - the management independence of the railways;
 - the separation between infrastructure management and transport operations;
 - the improvement of the national railways' financial situation;
 - access to railway infrastructure.

These will be discussed below, but it is first worth looking briefly at recent trends in railway traffic. Some key statistics are presented in Annex A; these show that in general the decline in the railways' share of the market has continued. Despite some bright spots - notably traffic on high-speed lines - the overall picture is one of static or reduced traffic, declining market shares and increasing financial deficits. The railways have continued to lose traffic to roads and the importance of this latter mode of transport has grown considerably. It is notable that in those countries where the railways formerly held a large (over 25%) share of the freight market in 1970, that this had fallen by some 50% by 1993. In the case of France, Germany and Belgium this was in part due to the decline of basic industries but this factor should not conceal the reality of the situation: road hauliers succeeded in reducing their real costs whilst improving their quality. This was due to a combination of factors, notably the success of the Common Transport Policy in introducing liberalized rules and dismantling restrictive national barriers in the sector. If the railways are to benefit from similar changes, further action is clearly needed.

2. To date, Denmark, Germany, the Netherlands and the United Kingdom (except for the Channel Tunnel) have fully transposed the Directive and France has recently adopted legislation. Six other Member States have partially transposed the directive. Generally speaking, Member States have made considerable progress in giving the railways legal independence, although sometimes this does not mean real management autonomy, and in separating infrastructure management from transport operations. The provisions regarding access rights to infrastructure have created the most problems, although the directive on the allocation of infrastructure recently adopted by the Council should resolve many questions about access and charging. Hence full transposal should follow rapidly in all Member States (fuller details are given in Annex B).
3. As regards management independence of the railways, a key aim of the Directive was to ensure that railway management was given sufficient independence to function efficiently. To this end, Articles 4 and 5 of the Directive set out a number of areas where the railways were to be given management independence. The results vary. Some Member States have made considerable progress in allowing management to operate autonomously. In other Member States less progress has been made. For instance, the management of the railways is still subject to close political control and has little real freedom to organize the enterprise effectively. This is particularly the case in the passenger transport sector, as railways are required to meet a range of non-commercial objectives. The Commission is conscious of the problems that are involved in creating an autonomous enterprise. It accepts that it is difficult to draw the line between interference in management and the legitimate requirement of the state to supervise a national utility that provides important public services. However, the failure to make satisfactory progress is likely to have important repercussions on the future of the railways. The increasing integration of the Community means that major transport

firms have to be capable of responding quickly and efficiently across the whole market, not only within their national frontiers. Railways that lack the autonomy necessary to do so are unlikely to play an effective role in the market, particularly that for international traffic.

4. Is it useful, then, to clarify further the role of the state vis-a-vis the railways? This question may best be addressed by looking at the objectives of the state in relation to any transport undertaking. In the first place, it has the duty of ensuring safety. The railways have a reputation for safety that other modes of land transport should emulate and that the Member States are justified in preserving. A second issue is the provision of essential public services. The railways play an important role in the life of many urban and rural communities, and in most cases the services they provide require financial assistance. Such support is vital for many passenger services provided in the public interest, so the authorities concerned have a clear interest in their efficient operation, though not in their day-to-day management. Third, there is the involvement of the state in providing infrastructure. While there are good arguments for a greater presence of the private sector in the financing and construction of new infrastructure, there is a continuing need for the state to supervise the planning of networks in the general public interest. Finally, Member States have general economic policies, such as those on prices and competition, that affect the railways but this should not be in a different way from other utilities. Some ideas to clarify the situation are given in Part 2.
5. As regards the separation of infrastructure management and transport operations, Directive 91/440/EEC requires that at least this be done in the accounts. This has been implemented in most Member States although in different ways. For example, Denmark and France are maintaining a vertically integrated system, independent from the state, Spain is creating separate business units within its railways, Germany and the Netherlands are progressively establishing distinct organizations for infrastructure and transport operations, while the UK intends to privatise, starting with Railtrack, the infrastructure manager. The Commission is analysing how the separation works in practice. It should be noted that the position of Swedish railways, almost alone in Europe, has significantly improved since infrastructure and operations were separated (1988) and an equitable infrastructure charging system introduced⁽⁶⁾.
6. The financial situation of the railways has not generally improved since 1991, although certain Member States have made good progress in reorganizing their capital accounts. Many railways appear to have experienced a cycle of new development programmes, increased loans, higher financial charges to service the loans and, in due course, greater deficits. The question is to what extent the increased deficits are due to the failure of investments to produce the expected returns or to a shortfall in the compensation provided by the public authorities for public services etc.

As the reform of support for public services, introduced by Regulation 1893/91⁽⁷⁾, has now been in place for two years, the Commission intends to examine its operation and to make proposals, if needed. It therefore plans to launch a general study of the current financial situation of the railways and their receipts from public sources.

⁽⁶⁾ Railways in Sweden were organized into two units in 1988. Since that date an infrastructure charging system similar to that applied to road transport has been applied. Partly due to this and increased management efficiency the position of the railway operating company (Statens Järnvägar SJ) has constantly improved and it is now in an overall surplus.

⁽⁷⁾ Council Regulation (EEC) No 1893/91 of 20 June 1991 amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway. OJ No L 169, 29.6.1991 p. 1.

7. Access rights to railway infrastructure have aroused interest and controversy. Certain Member States have not implemented these provisions. For this and other reasons, some potential entrants have experienced problems in launching operations: for instance they have had difficulty in obtaining timely information on the availability and cost of train paths and traction facilities. Few new operators have yet commenced business, although the existing national companies have been active in creating new groupings. However, there is interest in entering the freight market, and not only the combined transport sector.

PART 2

FUTURE MEASURES TO DEVELOP THE RAILWAYS

The Commission has already made proposals on issues important to the future of rail transport, such as trans-European networks, interoperability and research. It is preparing papers on the external costs of transport and the Citizens Network (adequate and efficient public passenger services). The subjects discussed below should therefore be seen in this wider context.

1. **ACCESS RIGHTS TO INFRASTRUCTURE.** Directive 91/440/EEC created rights of access for international services limited to international groupings of railway undertakings and to undertakings providing international combined transport services. The possibility that new entrants could provide rail services and that several operators could use the same infrastructure led the Commission to propose directives laying down the conditions of access to the network. These proposals were adopted in June 1995. The main options for the future, so far as access rights are concerned, are these:
 - to maintain the status quo, that is to limit freedom to offer services to undertakings that meet the requirements of Directive 91/440/EEC;
 - to liberalize access to infrastructure completely, for domestic and international traffic in both the passenger and freight sectors;
 - intermediate solutions, such as open access for international passenger services and for all freight services.
2. Maintaining the status quo would mean that further progress would be postponed. However, the railways are continuing to lose traffic and there is an urgent need to revitalise their services, particularly in the international field. The sector would benefit from the entry of new capital and enterprises and from the consequent incentive to existing companies to provide more competitive services. The progress made in the combined transport sector since 1991 shows that the possibility of new entrants stimulates existing companies to improve their services. In any case, maintaining the status quo would be inconsistent with the obligations of the Treaty to develop a common transport policy based on the principle of freedom to provide services. At the other extreme would be full liberalization of access to railway infrastructure. This would of course represent an immediate and complete introduction of freedom to provide services. However, so rapid a move could create difficulties in a very complex industry, that has been regulated for many years.
3. On balance an intermediate solution, to open access for all freight operations and for international passenger services, appears justified. In the freight sector, the entry of new undertakings and the stimulus this would give existing operators, would help solve the problems of quality and of under-investment that hinder the development of more competitive rail services. The liberalization of access for both international and domestic freight is necessary to allow operators to offer comprehensive services with full logistic support; the artificial separation of the freight market into a liberalized international and a monopolistic domestic sector would discourage new entrants and make rail services less efficient and economic. The experience of the railways in the USA since deregulation in 1981 shows convincingly that a new approach to freight transport based on market principles can pay dividends. After a long period during which traffic and modal share declined consistently, the free market created by the 1981 'Staggers Act' allowed the railways to develop new services, often in partnership with other transport operators. The result was a reversal of the chronic cycle of traffic losses, bankruptcies

and staff lay offs. The railways in the USA are now experiencing record levels of traffic and have returned to profitability.

They are engaging new staff and buying equipment in a way that has been unknown for many years. It would be overly simplistic to ascribe all these changes simply to deregulation. But it would also be naive to ignore the similarities that exist between the situation in Europe today and that in the USA during the 1970's. If all other sectors of the Community's economy have benefited from the efficiency generated by the abandonment of bureaucratic controls, there is no evident reason to believe that the railways would not do likewise.

4. International passenger services are potentially a promising sector of the railways' activities. However, the growth of traffic has been hampered by the failure to coordinate and market international trains. Creating the possibility to operate new forms of international passenger services would facilitate the development of Community links and better serve passengers. It should be emphasised that international services are not, except in rare cases, concerned by public service obligations imposed by the state. Moreover, access rights for international services could generally be granted without coming up against the problems of losing network benefits and of "cherry picking" on domestic passenger services. A general point should be noted here: the average passenger journey by rail is short, which indicates that the bulk of the railways passenger business would be unaffected by any move to liberalize international transport, which is essentially long distance.
5. **PASSENGER SERVICES IN THE PUBLIC INTEREST.** The provision of public passenger services normally involves State aid. State aid for the provision of services provided in the public interest represents an important element of the total revenue of railways. The white paper on the Common Transport Policy stated:

"it is necessary to develop guidelines concerning the conditions under which they (State aids) are to be considered acceptable under Community law".

In the case of the railways, guidelines for maintaining services through the provision of State aid already exist. However, the radical changes in the management and operation of the railways that have occurred since the adoption of Directive 91/440/EEC: now require them to be reexamined. In particular, it is necessary to see whether the rules should be modified to take account of new types of railway company and whether the information requirements should be simplified and modified to be more effective for monitoring State aids.

The Commission would welcome the views of interested parties.

6. The essential purpose of the rules on State aids is to meet the requirements of the Treaty, in particular Articles 77, 92 and 93. These rules have been in force for many years and major changes have taken place in the organization of the railways. The Commission therefore intends to launch a study of the application of Regulations (EEC) Nos 1191/69, 1893/91, 1192/69⁽⁸⁾ and 1107/70⁽⁹⁾, to assess their effectiveness in preventing distortions of competition between Member States. It will then consider whether it is necessary to adapt these Regulations to the current situation of the railways.

⁽⁸⁾ Regulation (EEC) No 1192/69 of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings. OJ No L 156, 28.6.1969, p. 8.

⁽⁹⁾ Regulation (EEC) 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway. OJ No L 130, 15.6.1970, p. 1.

7. The general question of how best to provide adequate rail services in the public interest will be taken up in the context of the Commission's initiative on the "Citizens Network". This is designed to provide a framework for passenger services by all modes throughout the Community. It is hoped to be able to present a communication on this subject later this year.
8. **COMBINED TRANSPORT.** The success of combined transport is vital for the development of the railways and for the provision of efficient inland freight services. As the Community is now steadily emerging from a period of low economic growth, demand for freight transport is beginning to increase once again. There is clearly a relationship between the rate of economic growth and the demand for transport: as the rate of economic growth increases, so does demand for transport. Although that relationship may be weaker than in the past, due to congestion and increases in real transport costs, demand will still grow, particularly in markets benefiting from the removal of barriers (e.g. the Iberian Peninsula and Central and Eastern Europe). The Commission considers that increasing use of capacity available in modes other than road transport will be necessary, if a satisfactory compromise between the protection of the environment and the needs of industry is to be achieved.
9. The possibility of making better use of inland waterways and railways has to be examined and an intermodal approach developed. This would associate various modes of transport in such a way as to make best use of each. There are now signs that action already taken by the Community is starting to bring results, as the increase in traffic by combined transport in 1994 shows. However, three problems still hinder the development of combined transport:
 - in the introductory period, the volume of business is often insufficient to fill a complete train, and hence costs per unit carried are high.
 - in comparison to the USA or Canada, railways in the Community are heavily involved in passenger traffic. This increases the cost of freight operations, due to added safety provisions, and can make it difficult to find space for freight transport.
 - until Community legislation regarding the coverage of infrastructure costs is fully developed, rail freight operators will frequently be handicapped by higher costs than they should be paying.
10. The separation of railway accounts into infrastructure and operations under Directive 91/440/EEC: has pointed up the question of infrastructure costs. Certain Member States have taken measures, for example the United Kingdom with the Track Access Grant. This scheme provides aid for rail operators and clients that face higher charges for rail than for road. Aid is based on the infrastructure component of the rail charge, up to the limit of the external benefits of the transfer from road to rail. The Commission has allowed this particular scheme under competition rules and is considering a general exemption for such measures; this will form part of a general review of Community rules on State aid for combined transport. In the meantime, the Commission has proposed the extension for two years of the existing regime.
11. In 1992, to encourage the development of new combined transport services, the Commission launched a specific programme, the PACT (Pilot Actions for Combined Transport)⁽¹⁰⁾. This has assisted the development of new services such as that from Germany, through Italy, to Greece and those to the Iberian Peninsula; other actions have concerned Northern Europe, the UK and Ireland. The programme has been assessed in

⁽¹⁰⁾ Commission's Decision of 22 December 1992 concerning the granting of financial support for pilot schemes to promote combined transport. OJ No L 16, 25.1.1993.

the light of experience and the Commission will soon propose that it be modified and transformed into a Community action. The aim would be to further growth of an efficient and self-supporting combined transport sector, offering good services on those axes where combined transport can be competitive. The new PACT would concentrate upon:

- the development of international links, including those to central Europe and new Member States, along routes identified in the TENs network.
- helping new entrants and other companies that could demonstrate, through a Community license, that they would provide safe and efficient services.
- ensuring good cooperation between different modes and operators.

A proposal to establish a new programme is in preparation with a view to submission in the course of 1995.

12. Combined transport is a chain and the overall quality of service is determined by the weakest link. Often this is the transshipment terminal, and a substantial part of total costs are generated by terminal operations. A number of terminal types can be identified that vary from the simple point where loading units are transhipped, to comprehensive logistic centres. The range of facilities available is such that the user is confronted with problems of information, and a balance between supply and demand is difficult to achieve. Another important point is the possibility of access. Certain terminals have access restricted to their owner companies. However, such restrictions are not acceptable when a terminal receives public support. As the efficiency of terminals is a key factor in combined transport, the Commission intends to examine the value of new measures to improve their efficiency.
13. INTEROPERABILITY. The Treaty sets the goal of promoting the interoperability of national transport systems in its Articles on trans-European networks. The Commission has launched two major initiatives relevant to this aim. First, it has proposed guidelines for the development of the trans-European transport networks. These guidelines would define networks for the different modes of transport, including high-speed and conventional rail, types of Community measure and priorities in realizing the networks. Second, it has proposed a directive on the interoperability of the high-speed train network. The Directive would create a framework for establishing essential requirements, technical specifications and standards for different sub-systems that would allow interoperability. It would also establish procedures for defining and adopting such mandatory specifications and standards.
14. The Commission considers that now a strategy should be developed for advancing the interoperability of conventional railways on the trans-European network, their capacity to allow international movements that, in safety and with greater continuity, meet the levels of performance specified. The problem is that conventional railways have developed against different backgrounds over a long period of time, so that there is a large diversity of infrastructure, rolling stock and equipment and different operational rules and procedures apply. These can make international services slower and more expensive than they need be. However, compared to high-speed lines, most conventional routes depend less on international traffic and the large stock of capital, although often requiring radical improvement, can only be changed progressively.
15. Promoting interoperability would improve the competitiveness of conventional rail in two ways. First, it would improve the quality and lower the costs of international services, by tackling the differences in norms for infrastructure, rolling stock and other equipment and the divergences between regulations and operational procedures that increase the costs and complexity of movements across frontiers. Second, it would lower costs, by allowing greater economies of scale in the production and maintenance of equipment. The railways have developed different standards for equipment and have tended to issue

detailed specifications rather than performance requirements. A move to performance requirements defined at Community level would encourage economies of scale and a unified competitive market, by furthering the application of Community rules on public procurement.

16. Various constraints, however, should be kept in mind. One is the scale and nature of demand for services requiring interoperability. This may only be significant in certain markets for rail transport, although the improvement of networks and services can create additional demand. Demand for interoperability is one of the first questions to study. A second constraint is financial. The cost of eliminating barriers to interoperability have to be identified (the additional financial burden may come from moving investments forward in time as well as from higher total costs) and questions such as return on capital and pay-back period addressed. This does not mean, of course, that costs and benefits in a wider sense and over the whole life of a project should be overlooked.
17. Another question is that of the relationships, so far as technical specifications are concerned, between interoperable high-speed and conventional networks and between conventional and local services on the same tracks. These will require study in some depth as work on interoperability progresses.
18. The Commission has started a study programme, as the basis for developing a general strategy and working out priorities. One study would collect basic data, and analyse the strategic changes in different markets, indicate the performance required to define criteria for interoperability, and assess their impact on infrastructures and rolling stock as well as the expected economies of scale. Another would look at specific routes to assess the benefits of interoperable services and the costs of different solutions (as well as alternative ways of achieving similar results). The next steps would involve more detailed examination of specific issues, the assessment of different policies and the presentation of proposals, as soon as possible in 1996.
19. **INFRASTRUCTURE COSTS AND CHARGING.** Some progress is being made on the development of infrastructure charging regimes. In the UK and Germany, operational systems have been developed, although the approaches followed sometimes diverge. The Commission intends to study developments in the Member States so as to answer the following questions:
 - the problems that might arise and their solution, if Member States use different methods of costing,
 - the costs to be attributed to freight services, and the impact of different attributions on passenger services,
 - whether measures of external benefits can be agreed and used to help set guidelines for State aids for rail freight.

The Commission proposes to report to the Council as soon as possible, making any proposals needed to encourage the more efficient use of the network.

20. **MANAGERIAL AUTONOMY AND THE ROLE OF THE STATE.** Ensuring that railways play an effective role in Community transport requires further action on a number of issues. This report has presented some of the subjects that the Commission has examined and others that it intends to study. A key question that has been identified, but not resolved, concerns the grey area between the management autonomy of the railways and the responsibilities of public authorities (see Part 1). To make progress it is essential to define more precisely the specific responsibilities of Member States. The Community has already introduced a certain clarification through its provisions on public service obligations, State aids, infrastructure development and so on. These could be brought together to create clear guidelines for the future.

21. The guidelines could cover three issues in particular. First, the provision of passenger services in the public interest⁽¹¹⁾. The Member States can always ask companies to provide public interest services in accordance with the provision of Article 5(1) of Council Directive 91/440/EEC. Member States can specify the services to be provided and monitor performance, but must take responsibility for the financial burden on transport operators. They can also maintain or create companies to provide services in the public interest and grant concessions and specific rights in accordance with Community rules. However services in the public interest are usually short or medium distance; for long distance services the guiding principle should be management autonomy and fair competition. The same applies to the freight sector, in which services should be organized on commercial principles, although there may be temporary State aid until a harmonized Community system of infrastructure charges, covering all modes and both direct and indirect costs, is adopted.
22. Second, the protection of safety. The public authorities should be capable of instituting and monitoring, in a non-discriminatory manner, provisions designed to ensure an appropriate level of safety in railway operations. This requires some specific control and supervisory mechanisms to ensure standards are maintained. Third, the planning and financing of infrastructure. This should be supervised by the state in a manner consistent with overall policy, and with Community principles. However the objective of attracting private capital into the sector may require the reconsideration of existing rules.

After consulting interested parties about the value of such guidelines, the Commission will decide about a proposal.

23. **CONCLUSIONS.** Further action is now called for, at both Community and national level, to ensure that the railways exploit their environmental and technical advantages and play the role set out in the white paper on the Common Transport Policy. The Commission now intends to consult interested parties on future options and priorities for action. This communication identifies a number of issues to be pursued actively. Other key questions have to be tackled, for instance external costs and public transport for passengers, on which the Commission is to report. The Commission believes that the development of the railways is a key element of the Common Transport Policy and will give priority to improving their situation and increasing their competitiveness.

⁽¹¹⁾ The question will also be covered in work on the Citizen's Network.

TABLE 1

TRANSPORT BY RAIL IN EUROPEAN UNION (15)

Freight

	1970	1980	1990	1993
Ton-kilometres (billion)	282	286	257	208
Market share (%)	31.7	24.9	19.1	15.4

Passengers

	1970	1980	1990	1993
Passenger-kilometres (billion)	213	248	272	264
Market share (%)	10.4	8.7	7.3	6.6

MARKET SHARE BY MODE

Freight

Mode ⁽¹²⁾	1970	1980	1990	1993
Rail	31.7	24.9	19.1	15.4
Road	48.6	57.3	67.3	70.8
Inland waterways	12.3	9.8	8.4	7.8
Pipelines	7.4	8.0	5.3	6.0

Passengers

Mode	1970	1980	1990	1993
Rail	10.4	8.7	7.3	6.6
Buses and coaches	12.7	11.5	9.0	8.5
Private cars	74.8	76.5	78.6	79.5
Air	2.1	3.3	5.2	5.5

Source: Eurostat and Commission

⁽¹²⁾ Freight transport by air is negligible.

TABLE 2**TRANSPORT BY RAIL IN EUROPEAN UNION (15)****Freight: market share by Member State (%)**

	1970	1980	1990	1993
Belgium	28.2	23.6	17.8	15.8
Denmark	19.2	17.2	15.6	17.0
Germany				
west länder	33.2	25.2	20.4	17.0
east länder	71.2	66.7	69.2	29.1
Spain	16.4	10.9	6.9	4.6
France	38.9	31.5	26.5	24.0
Greece	9.0	8.2	5.1	4.2
Italy	21.0	12.2	10.2	9.6
Ireland	12.0	11.1	10.3	10.1
Luxembourg	63.4	52.2	54.9	40.6
Netherlands	7.3	5.7	4.2	4.0
Portugal	10.4	7.8	12.7	14.6
UK	21.8	15.0	9.3	8.7
Austria	55.9	39.9	47.6	45.8
Finland	27.2	26.1	22.1	25.2
Sweden	49.3	48.8	42.5	41.9
EU (15)	31.7	24.9	19.1	15.4

Source: Eurostat and Commission

TABLE 3

TRANSPORT BY RAIL IN EUROPEAN UNION (15)

Passengers: market share by Member State (%)

	1970	1980	1990	1993
Belgium	11.4	8.6	6.7	6.4
Denmark	8.1	8.7	7.2	6.3
Germany				
west länder	8.8	7.0	6.4	6.5
east länder	28.9	21.5	14.4	7.4
Spain	15.0	8.5	7.4	6.6
France	11.0	10.0	9.2	8.0
Greece	17.2	9.0	8.2	6.3
Italy	11.7	9.4	7.0	6.3
Ireland	5.0	3.7	3.5	3.3
Luxembourg	8.0	7.3	5.0	5.9
Netherlands	9.4	6.9	6.9	9.0
Portugal	14.0	11.1	7.0	5.8
UK	8.0	6.3	5.2	4.6
Austria	14.3	11.6	11.1	12.3
Finland	6.6	7.1	5.7	4.9
Sweden	7.0	8.6	6.1	5.6
EU (15)	10.4	8.7	7.3	6.6

Source: Eurostat and Commission

**STATE OF PLAY OF THE TRANSPOSAL OF DIRECTIVE 91/440 EEC
ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS**

General

According to Article 15 of Directive 91/440/EEC, the then twelve Member States should have taken implementation measures by 1 January 1993. Transposal is now progressing: all Member States but one have notified legal texts to the Commission. Five have implemented the Directive completely, the others in part. Generally speaking, considerable progress has been made in establishing legal independence and in separating, at least in the accounts, infrastructure management from transport operations. Establishing access rights has proved more difficult although the adoption by the Council of a directive on the allocation of railway infrastructure and on the charging of infrastructure fees should resolve outstanding questions and so facilitate transposal.

The Commission is currently assessing implementation by the three new Member States.

Belgium

On 27 August 1993, Belgium notified texts on managerial independence and the separation of accounts. It has not notified the transposal of access rights.

Denmark

On 10 March 1994, Denmark notified a legal text that transposes the Directive.

Federal Republic of Germany

On 12 January 1994, Germany notified a new law on the structural reform of the federal railways that transposes the Directive.

France

On 19 October 1993, France notified texts transposing managerial independence and the separation of accounts. On 14 June 1995, it notified texts concerning access rights.

Greece

On 6 October 1993, Greece informed the Commission of its intention to transpose the Directive but has not made any notification.

Ireland

On 13 August 1993, Ireland notified texts that largely transposed the Directive, but left questions concerning access rights unresolved.

Italy

On 23 August 1993 and on 27 April 1994, Italy notified texts establishing managerial independence and the separation of infrastructure management and transport operation. It has not notified transposal of access rights.

Luxembourg

On 13 September 1993, 24 June 1994 and 5 June 1995, Luxembourg notified transposal text but not transposal of access rights.

The Netherlands

On 25 January and 24 August 1993, the Netherlands notified texts that transpose the Directive.

Portugal

On 24 January 1994, Portugal presented texts but these do not transpose the Directive.

Spain

On 15 November 1993, Spain notified legal texts establishing managerial independence, and on 26 May 1994 texts establishing the separation of accounts. Spain has not notified transposal of access rights.

United Kingdom

On 6 May 1994, the United Kingdom notified texts that transpose the Directive.

Channel Tunnel

France and the United Kingdom are preparing measures to implement access rights to the Channel Tunnel (not notified).

PART 3

**Proposal for a
COUNCIL DIRECTIVE**

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

EXPLANATORY MEMORANDUM

Explanation of proposal

1. The completion of an integrated market for transport services remains a major aim of the Community's transport policy. It is as important for the railways, a vital part of the sector, as for other forms of transport. Freedom to provide rail transport services should lead to a more efficient and competitive industry, that is closer to the market. It should attract new capital and enterprises, and stimulate the development of new services. This is necessary if the continuing decline in the railways' share of the transport market is to be arrested and their financial situation to improve.
2. In the case of rail transport, the application of the principle of freedom to provide services implies rights of access to rail infrastructure for railway undertakings established in the Community. A first step was the introduction of access rights by Council Directive 91/440/EEC of 29 July 1991. The Directive established rights of access for international groupings of railway undertakings to run services between the Member States where they are established and for railway undertakings to operate international combined transport. In June 1995, the Council adopted two directives intended to ensure the full, efficient and non-discriminatory implementation of these rights: a directive on the licensing of railway undertakings and another on the allocation of railway infrastructure capacity and the charging of infrastructure fees.
3. While the Community has taken this step towards an integrated market for rail services, the process is clearly less advanced than with other forms of transport, particularly road and air transport with which the railways are to a certain extent in competition. However, the Community has recognized, the need to take account of their special features and so create an integrated market by stages.
4. It is now time for the Community to take another step in establishing freedom to provide rail services. One reason is the obligation to apply the basic principles of the Treaty to the transport sector, including the railways. While this process may be progressive, it must continue to advance. The other reason is the continuing deterioration of the railways' market share and finances; their performance has declined sharply in recent years. There is an urgent need to stimulate competitiveness and attract fresh capital and new enterprises.
5. The next step in creating an integrated market should therefore increase the competitiveness of the railways, and develop their role in transport at Community level. The Commission believes the best solution would be to open access for all freight operations and for international passenger services. In the freight area, the entry of new undertakings and the stimulus that this would give existing operators would help solve the problems of quality and of under-investment that hinder the development of more competitive services. The liberalization of access for both international and domestic services is necessary to allow operators to offer comprehensive services with full logistic support. The artificial splitting of the market into a liberalized international and a restricted domestic sector would discourage the development of new services.
6. It should be emphasized that access rights for operating international services would not affect passenger services in the public interest, because, except in rare cases, they are national by nature (and indeed generally short distance). Nor would it create significant problems of loss of network benefits or of "cherry picking".
7. The Commission therefore proposes modifying Article 10 of Directive 91/440/EEC to create rights of access to railway infrastructure, for railway undertakings established in

the Community, for the operation of freight transport, the combined transport of goods and the international transport of passengers. This should significantly raise the competitiveness of rail transport and improve rail communications between the Member States.

Subsidiarity

8. The objectives of the proposal in relation to the Community's obligations

The Community has the obligation to apply the principle of freedom to provide services to transport, including to the rail sector. At the same time it recognizes the need to take account of the special features of the railways and so progressively to open access to railway infrastructure.

The proposal therefore involves the extension of the access rights created by Directive 91/440/EEC without going as far as the full liberalization of passenger services.

9. Does the proposal fall under the exclusive competence of the Community or is there shared competence with the Member States?

The proposal is put forward on the basis of Article 75 of the Treaty and is therefore the exclusive competence of the Community.

10. What means of action are available to the Community?

The Community has to create a legislative framework for the establishment of access rights. A Community directive would ensure that Member States grant such rights and that disparate national measures are avoided.

11. Is a uniform regulation necessary or would a directive suffice?

A directive would allow the right balance between harmonized Community rules and the need to recognize differences between Member States in the organization of the railways and in the relations between the authorities and the railways.

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

In cooperation with the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the greater integration of the Community transport sector is an essential element of the internal market; whereas the railways are a vital part of the Community transport sector;

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;

Whereas Council Directive 91/440/EEC⁽⁴⁾ provides that international groupings are to be granted access and transit rights in the Member States of establishment of their constituent railway undertakings, as well as transit rights in other Member States, for international transport services between the Member States where the undertakings constituting the said groupings are established;

Whereas the extension of those access rights, in accordance with the principle of freedom to provide services, would improve the efficiency of the railways relative to other modes of transport and facilitate transport between Member States, by encouraging competition and allowing the entry of new capital and enterprises;

Whereas freight transport offers considerable opportunities for the creation of new transport services and the improvement of existing ones;

Whereas, to be fully competitive, freight transport increasingly requires the provision of comprehensive services, including transport between and within Member States;

Whereas the international transport of passengers also offers substantial possibilities for the improvement of services;

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;

(1)

(2)

(3)

(4) OJ No L 237, 24.8.1991, p. 25.

Whereas, in accordance with the principle of freedom to provide services and in order substantially to encourage competition and the entry of new operators, access rights should be extended to all railway undertakings established in the Community for the transport of goods, for the combined transport of goods and for the international transport of passengers throughout the Community;

Whereas, in pursuance to the principle of proportionality, it is necessary and appropriate to set out at Community level the fundamental principle and objective of the freedom to provide services in the railway transport sector by the extension of access rights to all railway undertakings established in the Community, whilst leaving within the responsibility of the Member States the choice of the means to achieve the end result, which should be identical for all railway enterprises in the Community; whereas this is in accordance with the provisions of the third paragraph of Article 3b of the Treaty;

Whereas Directive 91/440/EEC should accordingly be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/440/EEC is hereby amended as follows:

1. Article 10 is replaced by the following:

"Article 10

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:
 - international and cabotage services for the transport of goods and for the combined transport of goods, where "cabotage" means national services provided by a railway undertaking within a Member State other than that in which it is established;
 - international services for the transport of passengers including the right to pick up and set down passengers at any intermediate points between those of arrival and departure.
 2. Railway undertakings engaged in providing the services referred to in paragraph 1 should conclude the necessary administrative, technical and financial agreements with the managers of the railway infrastructure used, with a view to regulating traffic control and safety issues concerning those transport services. Such agreements shall be non-discriminatory."
2. Article 14 is replaced by the following:

"Article 14

Within three years of [the date of adoption of Directive], the Commission shall submit a report to the Council on the implementation of this Directive accompanied, if necessary, by suitable proposals on continuing Community action to develop railways."

Article 2

Member States shall, after consultation with the Commission, adopt the laws, regulations and administrative provisions necessary to comply with this Directive within eighteen months of its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 3

This Directive shall enter into force the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

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