



COMMISSION OF THE EUROPEAN COMMUNITIES

**Brussels, 29.05.1997
COM(97) 242 final**

COMMUNICATION FROM THE COMMISSION

**TO THE COUNCIL, THE EUROPEAN PARLIAMENT,
THE ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS**

TRANS EUROPEAN RAIL FREIGHT FREEWAYS

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1. BACKGROUND

1.1 Rail Freight Situation

Between 1970 and 1995 freight carried by Europe's railways declined by nearly a quarter from 283 to 220 billion tonne kilometres. In itself this would have serious consequences, but when it is put in the context of an increase in the overall freight market of 70% it means that rail's market share has halved from some 32% to 15%. The majority of this increase in freight traffic has been carried by road which has led over the same period to an increase of 150% in road freight. If this trend continues for the next ten years the railway's share of the market will drop from 15 to 9% while the overall market expands by a further 30%.

While these are global figures, the trends have very real impacts. If the predictions are borne out they suggest serious increases in congestion, pollution and to a lesser extent accidents. While it is clear that rail cannot possibly solve all freight needs, it can make a real contribution to the Community's need for sustainable freight transport, particularly over longer distances. In fact, even though some 85% of goods by tonnage transported within the Community are within a range of less than 150km and most of this is not a market for rail freight, more than 50% of tonne-kilometres are transported over 150km and this clearly illustrates the relative importance of long-distance freight traffic within the EU. The impact which rail could have on this long-distance market is compounded by the fact that a great deal of this freight is concentrated on high density corridors (particularly but not exclusively related to ports). It is this specific market where the Freeway concept outlined in this paper could make a valuable contribution to reversing the trend of declining market share for rail freight.

Concern over transport trends, and particularly the failure of the railways to respond to the needs of the market, led the Commission to publish a White Paper¹ in 1996 on revitalising Europe's railways. This emphasised that rapid action is needed to stop the decline of rail freight because, if present trends continue, it is likely that rail freight will disappear from major segments of the market.

Many of the problems which were identified have arisen because railway management has had neither the freedom nor the required incentives to address the challenges facing it; in short railways do not operate like businesses. To change this the Commission considers that the management of rail organisations have to be given the freedom and resources to improve performance in addition to the introduction of market forces and the better integration of national systems. However, action to achieve this on a Europe wide basis will take time to achieve results.

International journeys are a major cause for concern, as railways frequently fail to offer services which are competitive with road freight in terms of price, speed, flexibility and reliability. This is particularly important because rail is more competitive over longer distances, but to realise transport over these distances in Europe generally means crossing national borders. The national focus of railways

¹ A Strategy for revitalising the Community's railways COM(96)421 final

has left them handicapped when dealing with this traffic although they are potentially well suited to carry it. It is in view of the urgent need for action for rail freight that the Commission proposed the creation of Trans European Rail Freight Freeways in its White Paper.

1.2 Origins

In preparation for the Commission's White Paper in 1996, Transport Commissioner, Neil Kinnock, asked a group of experts to offer advice on the future of the railways in Europe. In their report² the group first proposed the idea of creating a number of "Trans-European Rail Freight Freeways" to tackle the specific problems of cross-border rail freight. When the Commission subsequently published its railway White Paper it launched the idea as a practical first step to revitalising freight transport by rail. The Transport Council discussed the White Paper in October 1996 and welcomed the concept of Freight Freeways.

The Commission advocated the setting up of Freeways on a voluntary basis as a step towards revitalising rail freight. The broad definition developed in this Communication should, therefore, be considered as a recommendation by the Commission on how such Freeways should be set up. This recommendation is based on the work of the High Level Group, which was set up in November 1996, and discussion with a wide range of interested parties (see § 2).

Clearly, other forms of improving the organisation of international rail freight can be envisaged which could make a contribution to the promotion of rail freight. However, the Commission considers that the detailed definition presented in Section 3 of this Communication holds out the best prospect of improved performance of international rail freight services in the short to medium run. This Communication clarifies the requirements stemming from Community law, and in particular Competition law, for Freeways developed in accordance with this definition.

1.3 Summary of existing access rights under European legislation

Directive 91/440/EEC³ set out, for the first time in Community law, rights of access to railway infrastructure in the Community. Until its adoption each enterprise had benefited from a national monopoly and therefore exclusive utilisation of the infrastructure in its country. The first paragraph of Article 10 provides, for international groupings of railway undertakings, a right of access in the Member States in which they are established, as well as a right of transit in the other Member States, but does not permit the loading or unloading of passengers or cargo in the transit countries. For railway undertakings operating international combined transport the second paragraph of Article 10 provides a total right of access as well as the right to load and unload cargo, with the only limitation being that cabotage is not included. To facilitate the exploitation of the rights established in directive

² The Future of Rail in Europe

³ Council directive 91/440/EEC of 29th July 1991 on the development of the Community's railways. O.J. L 237, 24.8.91.

91/440/EEC, two further directives 95/18/EC⁴ and 95/19/EC⁵ were adopted which set out requirements relating to licensing, charging and train path allocation.

Directive 95/18/EC establishes the framework for the licensing of Community railway undertakings. It creates the right for undertakings to apply for a licence when they are or will provide services referred to in Article 10 of directive 91/440/EEC. The directive establishes the broad criteria for issue or refusal of a licence and conditions regarding the validity of the licence.

Directive 95/19/EC established a framework for rail infrastructure charges and train path allocation. For charges the rules should enable the infrastructure manager to market the available capacity efficiently and the charges must be non-discriminatory for services of an equivalent nature in the same market. Fixing the level of the charges can take account of the nature of the service, the market situation and the type and degree of wear and tear of the infrastructure.

Article 3 of directive 95/19/EC provides two principles for the allocation of train paths: first, rail infrastructure capacity must be allocated in a fair and non discriminatory manner; second, the allocation procedure must permit efficient and optimal use of the infrastructure. Nevertheless, the directive allows certain derogations from these principles. Priority can be given in the allocation of paths to services provided in the public interest and to services which, without prejudice to competition law, are effected on infrastructure specifically constructed or managed for that purpose. States can provide special rights if these are indispensable to ensure a good level of public service or to permit the financing of new infrastructure, but without prejudice to Articles 85, 86 and 90 of the Treaty.

Both directive 95/18/EC and 95/19/EC must be implemented by Member States by 27 June 1997.

1.4 Freeways as a step toward liberalisation

International rail freight is characterised by national monopoly operators who have collaborative agreements with other national operators. These agreements result in a lack of clarity about responsibility or liability for cargo and frequently poor service as a result. Even companies for whom a rail solution would be ideal are often thwarted by the inability of the railways to provide the type of service that they require, at a competitive price. The current arrangements mean that to put together an offer, in response to a request from a shipper, requires negotiation with each national railway to establish the availability of an appropriate path and the total charge to be levied. This process is time consuming and does not lend itself to easy adjustment if the price or time is un-competitive. The cumulative nature of the process means that frequently journey times and cost are excessive.

The creation of Freeways, as outlined in the Railway White Paper is intended to improve the international rail freight product, and can be done quickly and cheaply. This concept implies that Member States and infrastructure managers would open

⁴ Council directive 95/18/EC of 19th June 1995 on the licensing of railway undertakings. O.J. No. L 143, 27.6.95.

⁵ Council directive 95/19/EC of 19th June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees. O.J. No. L 143, 27.6.95.

access on a voluntary basis, without waiting for changes to Community legislation. Existing infrastructure would be used and trains would continue to operate on the basis of existing, but where easily possible simplified, procedures and technical requirements. Freeways are a short to medium term measure to facilitate the development and implementation of the long term policy that the Commission set out in its White Paper.

Existing railway companies are already subject to very effective competition from road transport. The purpose of Freeways is to enable rail freight to become a more attractive option. This will be achieved in two ways, firstly through the removal of artificial obstacles to international rail freight and secondly through the improvement of the offer by the creation of competition in the provision of rail freight services. The White Paper talked in some detail about the multitude of problems which had arisen as a result of the way that rail had evolved in Europe. The Freeway concept aims to overcome the purely organisational issues which hamper international freight.

The Commission believes that the second component, the creation of a competitive market with a customer oriented offer, is essential if rail's potential is to be released. While it is hoped that existing train operators will have the courage to begin to compete with each other where that makes sense, it could in part, and over time, also be achieved by new entrants. However, in view of the high start-up costs and risks it is not likely that there will initially be many new entrants and these are likely to concentrate on specialised areas of the market. These are likely to be new markets so new entrants would increase the rail customer base rather than taking business away from the incumbents. The increase in the overall rail freight business should benefit existing railways in a number of ways such as the spreading of fixed costs, traffic feeding on to their networks and increased awareness of the potential of rail freight. Fostering this fledgling competition will require the Commission and national competition authorities to be acutely conscious of the danger of abusive behaviour by operators and to act swiftly and decisively if this is detected.

The Commission takes this opportunity to recall that co-operation which goes beyond pure infrastructure co-operation envisaged and also covers areas of train operation, in particular if it includes revenue pooling and sharing of train operations, most probably falls under Article 85. The Commission has given a 3 year exemption under competition rules to co-operation agreements between railways⁶. This exemption does not cover commercial agreements between train operators except for combined transport. The operation of this exemption is currently monitored by the Commission which will analyse its implementation later in 1997. If a railway company exploiting the freedom of a Freeway, needs assistance from another railway operator (for example for traction, drivers, shunting, wagon management) then this should normally be provided on the basis of a service contract with non-discriminatory terms and tariffs.

1.5 The principal elements

Leading from this analysis the Commission proposal for Trans European Rail Freight Freeways as outlined in the White Paper contained the following principal elements:

⁶ Case IV-35 111, decision of 25.7.95, concerning two fiches of the Union Internationale des Chemins de Fer

(1) Open access for all operators.

(both existing railway enterprises wishing to operate beyond their national borders and companies new to rail transport).

(2) The facilitation and simplification of the use of rail infrastructure.

(for example by establishing one-stop-shops for access to the Freeway; creating simple, attractive, transparent charging systems; ensuring that path allocation is fast and simple; seeking ways of providing adequate priority to freight; seeking to eliminate or reduce border delays.)

1.6 Relationship to other Community transport policies

The Commission transport policy aims at achieving sustainable mobility. A major aim is to ensure that transport decisions are made that are rational and take account of all the consequences of transport decisions, including, their environmental and safety impact. These decisions are dependent on a range of factors such as quality, reliability, availability and price. If decision making is not to be distorted by incorrect price signals, it is necessary that the charge for services is aligned with the full cost of that transport to society; that is to say it should cover external costs, such as congestion, pollution and accidents as well as direct costs. At present these costs are largely not paid directly by transport users but by society as a whole, and this leads to distortion of transport decisions both within and across modes. (In particular transport modes with larger external impacts appear more attractive to users than their net social benefit.) These ideas were amplified in the Commission's Green Paper "Towards Fair and Efficient Pricing in Transport"⁷.

The first concrete step to apply these ideas was the Commission's proposal for a revision of directive 93/89/EC which sets a framework for road user charges and tolls for heavy goods vehicles⁸. The Commission proposal seeks to relate charges for road use for these vehicles more closely to the costs which they impose, principally through greater differentiation of charges relating to road damage, emissions and location. At locations where the costs are very high, and where high charges would consequently be justified, the Commission believes it is desirable that, before the full costs should be charged, an alternative to road transport is available with open access to infrastructure thus providing a competitive choice for the movement of goods.

The Alpine area provides a natural barrier between much of Northern and Southern Europe. The growth in trade resulting in particular from the single market has placed considerable strain on the limited number of routes through this area. A strategy is needed to tackle the problems which arise from this Alpine transit. The Commission will shortly be producing a Communication on a Framework for the solution of environmental problems caused by heavy goods vehicles. While the Eurovignette proposal can offer some assistance in this direction through ensuring that more sensible modal choices are made through charges more accurately reflecting costs, it is also necessary to ensure that the alternatives are sufficiently

⁷ Towards Fair and Efficient Pricing in Transport COM(95)691 final

⁸ Proposal for a Council Directive on the charging of heavy goods vehicles for the use of certain infrastructures COM(96)331 final

attractive to be used rather than simply leading to higher transport costs. The creation of a more attractive rail freight and combined transport offer, facilitated through the creation of Freeways does raise the prospect of a significant shift of long distance goods traffic from road to rail.

On 29 May 1997 the Commission adopted a communication on freight intermodality⁹. This identifies the impact of various factors on modal choices, as well as identifying a number of obstacles which discourage inter-modal transport. The communication seeks to identify actions which can contribute to an improvement of the ability for freight users to make use of the optimal transport mode at each point of the transport chain.

2. DISCUSSIONS

2.1 High Level Group.

After the discussion of the railway White Paper at the Transport Council in October 1996, it was agreed that the Commission should establish a High Level Group of personal representatives of the transport Ministers to take the idea forward. This group met five times before May 1997 and has discussed working papers produced by the Commission as well as the results of the work carried out by the Community of European Railways (CER) who have also been closely involved in the exercise. The aim has been to arrive at a common view of the Freeway concept as well as a broad definition. The definition should contain general principles on the key issues identified, and these include: access to the infrastructure; the single point of contact which deals with charging and train path allocation for the Freeway; Performance levels; and Border delays.

The meetings have been positive, with general support for the Commission's aim and agreement on the issues which should be tackled. The group has particularly emphasised the need to ensure not just open access on the Freeway but also fair access to ancillary facilities such as terminals. However, there have been differences in approach particularly relating to the degree of access to the Freeway. Some Member States have indicated that in their view access to Freeways should not go beyond current Community law, that is to say that open access on Freeways would not be immediately acceptable to them.

2.2 Industry, Business and Shippers

For the Freeways to achieve their objective, it is essential that they meet the needs of their users. The immediate users are of course train operators, but equally important are the views of the end customers, that is to say the businesses which are sending the freight. Increasing competition in the provision of transport services are clearly important for business, and will increasingly facilitate SMEs in taking advantage of the opportunities provided by the Single Market. In view of this the Commission has sought to keep business and in particular shippers and rail users well informed of its proposals. Dialogue has taken place in a number of ways, through formal meetings, informal contacts and through correspondence including a submission from the European Shippers Council. It is apparent that there is considerable desire by shippers to make use of rail and its advantages

⁹ Intermodality and intermodal freight transport in the European Union, Com(97) 243 final.

where it makes sense for their businesses. There is a general endorsement of the Commission's analysis of the reasons for rail's current unattractiveness and a recognition that the implementation of Freight Freeways could be an important step toward making the rail freight product more attractive. Business in general quite clearly believe that real competitive train operation will lead to railway enterprises which are better able to respond to their demands.

2.3 Community of European Railways

The Community of European Railways (CER), which represents railway Train operating and Infrastructure Management organisations in the European Union and Switzerland and Norway, is concerned to ensure that proposals for the creation of Freeways are practical and achievable and will result in an improvement in the rail freight product. The CER has therefore set up a number of working groups to look into practical issues raised by Freeways and has kept the High Level group informed of progress with that work. To identify the sort of technical problems to be overcome and to develop an understanding of the operation of a Freeway a simulation was performed on a number of routes from Benelux to Italy. This simulation has identified potential for 17 additional freight train paths per day along this route at commercially attractive times and speeds averaging almost 60kph.

An independent consultant was employed by the CER to provide external advice and input to the practical implementation of the concept. The analysis performed has confirmed the feasibility of the concept and has outlined in some detail how the Freeway concept can be realised within a relatively short period. The CER concludes that the technical barriers can be overcome, and that the product offered by the infrastructure managers can, through different means of working and improved co-operation, be improved. The CER thus confirms the Freeway approach as put forward by the Commission in its White Paper. These conclusions are outlined in the CER's report¹⁰ on its work which was published in April 1997.

2.4 Outcome of discussions

The Commission has found the discussions with the High Level Experts, railways and shippers from the Member States extremely useful. This communication reflects the outcome of these discussions which have led to a large degree of consensus, even though this does not mean that the parties had a unanimous view on all the issues discussed. The following chapter on the Freeway definition is based on both the Commission's working papers prepared for and discussed by the High Level group, as well as on the more detailed findings of the CER.

3. DEFINITION

An overriding factor during the development of the Freeway concept and during discussions between the Commission and interested parties has been that all elements of the definition of a Freeway and their subsequent implementation by Member State railways must respect Community Law. Nevertheless Freeways will, on a voluntary basis, take a number of issues further than the requirements of Community law. These issues include elements such as the question of access, and the co-ordination of train path allocation and

¹⁰ European Rail Freightways: Proposal to The European Commission

charging Following discussion in the High Level Group the following definition was generally agreeable in most of its elements to all Member States.

3.1 Operation on a Freeway

The Commission as well as a large number of Member States see the Freeways as a first practical step to overcoming the limitations of Directive 91/440/EEC (see § 1.3 above). Therefore, access should ideally be open to all licensed Community railway undertakings, who comply with the necessary access conditions which are established on safety grounds, on a non-discriminatory basis. Directive 95/18/EC provides for licensing of railway undertakings to carry out services provided for by Article 10 of Directive 91/440/EEC. The scope of a Freeway goes wider than this limited definition of access rights so it is proposed that the same generally agreed licensing principles should apply to this wider range of operators. While this is straightforward for a number of Member States, in particular those who have in the meantime entered into discussions on North-South Freeways (see § 5.2.1. below), some other Member States (as mentioned in § 2.1. above) prefer a more cautious approach. The Commission is interested, in order to make rail freight transport more attractive, that the Freeway concept as described in this communication is implemented on as many routes as is economically feasible, even if in some Member States the whole concept would need to be implemented in several stages over a certain time. What is essential, is that railway undertakings may acquire business in a Member State other than the one in which they are licensed, and operate train services into that second Member State without being obliged to enter into a classical co-operation agreement with a railway undertaking from that second Member State even if it needs locomotives and drivers to be provided by the second railway undertaking. The Commission believes that, as in other economic activities, these should be acquired through service contracts instead of risk sharing agreements. It should however be clear that the Freeway agreements will eventually lead to open access on the determined Freeways in all Member States.

In summary the Commission concludes that:

A Freeway should be open for fair, equal and non-discriminatory access to all train operators licensed in the Community.

The criteria for licensing train operators to operate on a Freeway should follow the same principles as laid down in directive 95/18/EC.

The criteria for the allocation of railway infrastructure capacity and the charging of infrastructure fees should be in compliance with directive 95/19/EC

Freeways should, subject to national regulations, be open to cabotage.

Freight Terminals on a Freeway will be open for fair, equal and non-discriminatory access to all train, road haulage and waterway operators as appropriate.

3.2 One-Stop-Shop

One of the principal elements to improve the rail freight offer is the creation by the relevant Infrastructure Bodies of a One-Stop-Shop (OSS) to market the freeway to licensed railway undertakings. Clearly the establishment and operation of OSSs must comply with Community law. To be effective the OSS will need to be

operated by staff with an excellent knowledge of the requirements of operators and the constraints of the system.

3.2.1 Tasks

Ideally the OSS as "Freeway Manager" will:

- (1) Analyse capacity and market the infrastructure of the Freeway.
- (2) Undertake path allocation discussions with Infrastructure Bodies and Forum Rail Europe (which is the body responsible for co-ordinating international train paths) on behalf of train operators and allocate paths.
- (3) Monitor and control performance of the Freeway.
- (4) Undertake charging on behalf of the individual Infrastructure Managers. This would involve it undertaking a billing and clearing house function.

3.2.2 The organisation of the OSS

The role of the OSS can be characterised as that of the "Freeway Manager". It will not be a large bureaucratic organisation, and indeed the CER work identifies the possibility of its creation as a "virtual office" which will actually only exist on the Internet with greatly improved communication between existing Infrastructure Managers.

The main issues to be addressed when establishing the OSS are that it should be neutral, non-discriminatory and have the right incentives for success. Consideration must be given when establishing and determining its mode of operation that the OSS will need to be compatible with existing arrangements and priorities already determined.

To provide assurance that the OSS will act in a non-discriminatory manner, where linkages still exist between train operators and infrastructure managers the OSS should ideally be a completely independent body.

It is essential for the success of the Freeway that the OSS is provided with appropriate incentives. In principal this means that it must be in the interests of the OSS to maximise both international freight traffic and revenues.

When a Freeway is created by Infrastructure Managers, a code of conduct should be established which would define how the OSS could function. This would specify 1) each operators rights, 2) criteria for path allocation (these criteria must reflect the interests of all users) 3) appropriate mechanisms to ensure that the allocation of capacity is carried out on this basis, including providing justification for decisions which the OSS takes.

3.3 Train path allocation

Some of the most frequently voiced criticisms of international rail freight stem from the train path allocation process. Currently this is essentially performed on a national basis. Low international rail freight performance is frequently due to the gaps between these national timetables. Attempts are then made to marry up the resulting paths, but this cannot overcome the fact that the paths are sub-optimal by definition. The problem is exacerbated by the low priority given to freight traffic when allocating paths. There is plenty of evidence to show that high performance

international path allocation is possible and the CER simulation illustrated that time spent waiting at borders on those routes can be reduced by between 15% and 80%.

3.3.1 Capacity

One of the most important results of the work done by the CER was to show that even on busy routes there seems to be sufficient spare capacity available to start the Freeway exercise. It has already been mentioned that for example on the 1400 km route from Rotterdam to Milan some 17 daily paths (with competitive arrival and departure times and speed) could be made available; on the Brenner route, a notorious European bottleneck, there are some 5-6 daily paths free for freight trains in both directions. The available capacity appears sufficient to commence the setting up of Freeways and to prove that the trend of decreasing rail freight market share, can be turned around.

If however, the Freeway initiative is really successful, the question of additional capacity may arise. The High Level Group discussed the issue of capacity and its allocation at its fourth meeting. While it is frequently possible to find means of increasing capacity through adjustments to the timetable, a point inevitably arises with increased traffic at which the lost benefits justify infrastructure investment. Such investment might simply be enhanced command and control systems. The European Rail Traffic Management System (ERTMS), developed as part of the Community's Research and Development programme, is an instrument which could make a decisive contribution to the enhancement of customer service and improving the cost-effectiveness of operations by allowing much shorter separation between trains operating on the same track. It therefore offers the potential to reduce direct operating costs, maximise track capacity and optimise fleet operation. Where there is greatly increased demand, investment in actual permanent way might be required, possibly for dedicated freight lines. The re-formulation of the TEN priorities may play a useful and important role in this respect.

In its proposal for a revision of the TENS guidelines in 1997, the Commission will propose that rail projects which form part of a Freeway should be considered as being of common interest thereby making them eligible for support from the TENS budget line. In 1999 the Commission will propose a more general revision of the TENS guidelines in which full account will be taken of the need to give appropriate priority to the further development of Freeways including the possibility of adjusting the outline plans.

3.3.2 Priority

The Commission does not propose that Freight should be granted an automatic priority on a Freeway. However, the objective should be to better reflect the differing needs of customers than is currently the case. Where freight has a very high value and needs to be moved quickly there seems to be little sense in it being granted automatically the lowest priority. In many ways this issue is a political one where, for example, local and regional authorities may impose requirements on railways for passenger services. It could be desirable to reflect on whether the outcome of this is optimal particularly where it can result in rail services becoming unattractive to freight and leading to a transfer to road haulage with the consequent impact on society. The Commission is convinced that it is possible to better exploit the present infrastructure while taking better account of the need to provide adequate paths for international freight traffic. In that case it is not a question of establishing fixed priority rules for freight or passenger traffic but to ensure greater

flexibility to guarantee a satisfactory path allocation for both traffic types. Any review of allocation priority must, of course, take account of any rights and the expectations of existing operators.

Another important factor is the desirability of looking at the whole corridor rather than seeking to apply differing criteria on individual segments. Decisions taken on one Infrastructure network can impact on traffic on another network and for optimal performance these implications need to be taken into account. Such an approach would inevitably result in a better result for international freight.

3.3.3 Speed of Decision

The OSS in collaboration with Infrastructure Bodies must work to speed up train path allocation decisions. The time taken to reach decisions will depend upon the circumstances of the application. A distinction can be drawn between a regular service which is planned in advance and which can be allocated a path during regular, frequent allocation conferences and urgent requests for single or multiple paths.

For many regular services, the train paths required can be requested in advance, and therefore it is likely that the existing procedures as foreseen in Directive 95/19/EC will adequately meet the needs of train operators. These type of train paths could therefore be dealt with during the normal allocation conferences, respecting deadlines. Where there is a conflict between a request for a new regular service and an alternative service, the OSS will attempt to accommodate both services and to resolve any conflict through negotiation. If a negotiated settlement is not possible then, subject to the provisions of directive 95/19/EC, the path should be allocated to the user who is willing to pay the highest fee for its use.

Outside the allocation conference requests will have to be accommodated taking account of previously agreed and operating services. Efforts should be made to ensure that occasional services can be accommodated with minimal disruption to those existing services. In recognition that applications for paths which are not made during the normal allocation process are generally urgent the OSS will respond to such requests rapidly. In some circumstances the response time will be affected by factors such as whether the applicant is a new operator on the section of the network and would therefore require checks of safety etc. However, when the Train Operator is already approved for operation then in general the target should be set which require that

- (1) For regular paths, a decision should be made within seven working days.
- (2) For one-off paths, a decision should be made within one working day.

3.3.4 Appropriate Paths

The OSS will aim to provide paths which meet as closely as possible the needs of customers in particular with regard to the journey times requested.

The OSS should seek to provide a competitive path speed as requested by the operator. For some traffic the speed may be unimportant, for other absolute reliability is what counts, and for other traffic high speeds and reliability must be achieved. This latter category of traffic has not been as well served in the past by rail as by road. If the Freeway is to enable rail to break into this market it must be able to offer the potential for average freight train speeds of 50 kph or more. Performance improvement will among other things depend on the quality of the

existing train paths. The CER simulation was able to provide a number of paths with increases in average speed of some 20%. The resulting paths were certainly competitive being some 6 hours shorter than the journey time for a lorry with a single driver.

While the OSS and Infrastructure Bodies must retain routing flexibility to optimise infrastructure use, they should endeavour to provide operators with paths routed as requested.

Where a path cannot be provided to meet the operators requirements and within the freeway specification, the OSS should provide the operator with an explanation of the reason for this inability and inform the train operator of the best available alternative paths.

3.4 Charging

Freeway charges must be non-discriminatory, however, it is also desirable that the system should be as simple and transparent as possible. As a result the charge that would be offered to any operator to use the same section of track should be derived using the same principles for each operator. Charges should reflect relevant costs, and should therefore not be determined through the use of arbitrary factors. Freeway discussions with the Member States have highlighted the wide divergence between charging systems. Indeed, on some routes it is conceivable that infrastructure charges may be so high that services cannot be run competitively with road haulage.

In the short term Freeway charges are likely to be based on the existing infrastructure charging systems and this will probably result in a scale of published tariffs. The Commission believes that it could be desirable for the OSS to be empowered by the relevant Infrastructure Bodies with a certain flexibility in charging levels, to ensure that charges can be competitive. This flexibility might be limited by for example a price floor which should at least cover the freight specific marginal costs. In the short run the success of the Freeway exercise will largely depend on the willingness of the Member States (and in particular those which are in a central position within the Community) to efficiently exploit the flexibility available in their individual charging systems. In the longer run rail infrastructure charging principles will be proposed by the Commission which is undertaking a study, with the view of bringing the present extremes of the individual rail charging systems closer together. To avoid intermodal discrimination it will also be necessary to look at ways of bringing charging systems for access to the infrastructure of different modes closer together.

In any case the OSS will be able to provide a train operator on the Freeway with one price offer for the whole of their journey. Ideally such a charge could be differentiated to take account, for example, of congestion such as peak/off-peak usage, or on environmental impacts or wear as discussed in the Green Paper on Fair and Efficient Pricing in Transport. Consideration might also be given to the appropriate level of charges for empty running and the effect on charges of the size and load of trains.

3.5 Border issues

The existence of the single European market means that there should be no reason for checks at internal physical frontiers. Infrastructure Bodies, train operators and Member States should work to eliminate or minimise border procedures and speed

up any which must remain. The work of the CER points to the sub-optimisation of marrying national timetables as a major reason for excessive border crossing times within the Community. The creation of end to end international freight paths has been shown to be effective in tackling this issue and vastly reducing delay which is of course one of the reasons for proposing the establishment of Freeways.

Member States should give commitments to suppress border checks for customs, safety and phytosanitary purposes where they still occur. If they are performed they should be carried out to cause minimum hindrance to trains. This might imply that they would be performed, as much as possible, at marshalling yards or origins and destinations. There should be mutual recognition of checks which have been carried out in the originating State.

Where there are no technical reasons why locomotives cannot be used across borders then the Commission sees no reason why this should not be allowed. Ideally all rolling stock which is authorised for operation on one national infrastructure network will be permitted to operate anywhere on the Freeway provided it is suitably equipped to interact with the necessary fixed systems of the infrastructure.

In line with EC directives which enable cross border operation by suitably trained crew, Member States, Train Operators and Infrastructure Bodies shall facilitate such operations. Adequate arrangements must exist for route learning and other training required.

3.6 Relations between Infrastructure Managers, the OSS and Train Operators

Infrastructure Managers may develop alternative legal models for the establishment of the OSS. Ideally through contracts with the relevant Infrastructure Managers in different Member States, the OSS should be in a position to enter into contracts with train operators wishing to make use of the Freeway on behalf of the Infrastructure Managers as well as invoice and collect funds from the train operators. This would avoid cumbersome procedures which had to be performed by train operators and each individual Infrastructure Manager. For simplicity, it would be desirable to have a single contract governing access to the Freeway between the OSS and train operators. In view of this it could be desirable to carry out further work on the development of such a contract for use between an OSS and train operators throughout the Community. The use of such a contract is unlikely to be possible in the short run and therefore the OSS might initially simply act as a contact point for the provision of all the appropriate contracts between train operators and each individual Infrastructure Manager.

3.7 Performance incentives

The Commission believes that it is desirable for Freeways to be established incorporating quality and reliability criteria. This could lead to the establishment of schemes which ensure the payment of rebates or surcharges where performance differs from that contractually agreed. Such a scheme would need to ensure that both the Infrastructure Managers and the train operators were liable to make payments where they were responsible for failure to operate as planned. It is in any case also desirable for quality indicators to be developed showing for example the percentage of paths provided as requested or percentage meeting specification, and for Infrastructure Bodies to make data available showing how effectively these standards are met.

3.8 Complaints and Arbitration

The One-Stop-Shop would be particularly well placed to look into queries related to the quality or operation of the Freeway. Its good links with the Infrastructure Managers should facilitate the resolution of minor problems. However, if train operators have complaints relating to the allocation of train paths then, in accordance with directive 95/19/EC, these must be handled by separate appeal bodies.

It is essential that solutions to possible complaints are found in a relatively short time, and that the arbitration body is neutral and independent in its decisions. The CER report suggests that the UIC Arbitration body could fulfil a useful function in this respect. Apart from this specific arbitration, the normal judicial processes are, of course, always open.

3.9 Information about ancillary services

In addition to its role of managing the Freeway the OSS may provide information to operators which will facilitate their operations on the Freeway. This may include information on, for example, the availability of traction and drivers, shunting, fuel and maintenance facilities. Such information would need to be provided on a non-discriminatory basis. The OSS would however, not be involved in actually providing or brokering any such services related to train operation.

3.10 Cohesion of individual Freeways

The whole concept of Trans European Rail Freight Freeways is for voluntary implementation by Infrastructure Managers and Member States. In view of this it is clearly not essential to specify a definitive model to be followed. Nevertheless there may be benefit in ensuring compatibility for example in organisation and operation so that, for instance where Freeways intersect, inter-running is straightforward. In addition to simplify the notification procedure it is desirable to ensure that the same broad issues are tackled in a comparable manner. The High Level Group established by the Commission and Member States should play an important role in safeguarding the cohesion of the different Freeways.

4. COMPETITION LAW

4.1 Article 85

The Freeway concept as described above is essentially a collaborative venture between railway infrastructure companies. There may be good reasons to argue that pure co-operation between infrastructure managers does not affect competition, at least between most, if not all, of the intra-Community freight corridors concerned and therefore, would not fall under Art. 85(1).

The main instrument to implement the Freeway concept is the establishment of an OSS. The OSSs' basic functions will include: identification and allocation of capacity on the relevant Freeway; monitoring and control of performance of the Freeway; and charging on behalf of the individual infrastructure managers. The nature and scope of the particular co-operative agreements that the relevant infrastructure managers will conclude for the establishment of each Freeway is still uncertain and will in any case depend on the flexibility and independence they will be willing to grant to the OSS.

In these circumstances, it is not possible to determine a priori whether the agreements required for the establishment of any particular OSS will fall under the prohibition of Article 85 (1) of the EC Treaty. Certainly, co-operation which goes beyond the above mentioned infrastructure management functions to also cover areas of train operation is more likely to fall under Article 85 (1) EC. Railway undertakings entering into infrastructure co-operation agreements must decide whether these need to be notified to the Commission. The Commission will, following a notification, decide in each individual case on the applicability of Article 85 (1) EC.

It is to be noted that agreements falling under Article 85 (1) EC may be declared permissible by the Commission if they have pro-competitive effects that outweigh the anti-competitive effects of the restrictions contained in them. Therefore, even if Article 85 (1) EC might be applicable to certain agreements related to the establishment and operation of a Freeway, the Commission would in principle see no difficulty in declaring them exemptible if they fully satisfy the following conditions:

- the Freeway in question improves the distribution of goods and speed up their transport, in particular, by means of the creation of a new product, that is an international train path offered through a One-Stop-Shop;
- the Freeway in question promotes the economic process by making rail freight transport more competitive with road haulage, in line with the Community's general transport policy and without distorting competition between train operators in the railway sector;
- consumers (that is the train operators and their customers) benefit from the establishment of the Freeway because rail haulage is faster, possibly cheaper, and of better quality;
- the agreements are indispensable to attain the above objectives; and
- the agreements are not capable of eliminating competition in any relevant market.

The Commission considers that through assuring open access to licensed railway undertakings such agreements are not capable of eliminating competition in any relevant market. Provided that the notifications contain all necessary information and the agreements in question satisfy the above mentioned conditions, the Commission will endeavour to handle them speedily and will be prepared to give comfort to the notifying parties in appropriate terms.

4.2 Article 86

If all train operators are to enjoy access to and operate on the Freeway on fair terms, then care must be taken to ensure that the allocation and charging process is non-discriminatory. An undertaking should not at the same time be both a competitor and the judge determining access to any relevant market. Article 86 or 90(1) of the Treaty would prevent a railway enterprise in a dominant position from determining what other parties are its competitors. The existence of an independent appeal mechanism or the absence of apparent discriminatory behaviour are not sufficient to rule out infringement of Articles 86 or 90(1) of the Treaty.

4.3 State aid

In general responsibility for promoting the development of railway infrastructure largely remains with the Member States. As outlined in more detail in the Railway White Paper, it is the Commission's practice to authorise public investment in

infrastructure, so long as it is equally accessible under the same non-discriminatory conditions and does not distort competition to an extent contrary to the interest of the Community. For the time being it is legitimate for States to finance investment in railway infrastructure so as to compensate for unpaid external costs in the road sector or to meet non-transport objectives, such as regional development, as long as these conditions are met. However, it is true that this practice does not necessarily resolve all problems of distortion of competition, notably those arising from different rules being applied in different Member States to the various modes of transport. Moreover, in the long run, the Commission believes that in all modes of transport, users should pay the full cost of infrastructure. The Commission will carry out a study on charging for railway infrastructure costs, in order to define further common principles.

5. NEXT STEPS

A broad degree of consensus has been reached on the Freight Freeway concept in the High Level group. The work performed by the CER has identified the practicality of implementing the concept as well as a broad consensus among existing train operators on the achievability of the concept while identifying a number of longer term issues which need to be tackled. It now remains for rail Infrastructure Managers to identify suitable routes and make proposals where they consider this desirable. So far a number of proposals are under discussion.

5.1 Location

The Commission's White Paper included an illustrative map of potential Freeway routes. However, the Commission believes that it is principally for rail infrastructure managers working together to identify the most attractive routes. Clearly there is also a role for Member State governments and the Commission to play in facilitating the process. So far there have been a number of possible routes identified and the relevant infrastructure managers are working on an analysis of the feasibility as Freeways (see § 5.2 below and the map at annex 1). In principle, the potential Freeways should meet two basic criteria: they must first be attractive from a demand viewpoint, and second, they should have sufficient capacity as mentioned above. This implies that Freeways are likely to be concentrated on the major international freight corridors which today are largely served within the Community by road haulage. The co-ordination of Freeways with the TEN rail and combined transport networks could allow, where appropriate, that Freeways would benefit from infrastructure improvements in the framework of projects of common interest.

5.2 Practical work underway

5.2.1 North-South Pilot Action

At the informal Transport Council in January 1997 the Netherlands proposed to Germany, Austria and Italy that they should jointly explore the potential for establishing Freeways utilising their rail networks. It was subsequently agreed that a sub-group of the High Level Group would be established to carry out this work. The group has now met and a programme of work is underway. The group is considering a number of routes, these would link: Gioia Tauro to Genoa then north via Germany to Rotterdam; Brindisi, via Verona and Brenner to Hamburg; and Vienna via Nuremberg to the Ruhr area. It is anticipated that the One-Stop-Shop could be created in 17 weeks and that it should be feasible to have these Freeways operational by the end of 1997. These discussions also involve Switzerland.

5.2.2 Freight Leaders and Logistics Club.

This group representing some of Europe's largest manufacturers and transport organisations has enthusiastically embraced the Freight Freeway concept. Three working groups have been established to examine the potential for the concept. The routes being investigated are Rotterdam (NL) to Milan (I), Wolfsburg (D) to Barcelona (E) and London (UK) to Sopron (H). These initiatives which are demand driven could possibly be fitted into a Freeway concept including the creation of a One-Stop-Shop, by the Infrastructure Managers concerned.

5.2.3 Other Community Freeways

As mentioned earlier the Commission would expect that Freeways will sooner or later, link all Member States. The Commission hopes that, in view of its position as a major transit country, the possibilities for both North-South and East-West Freeways involving France will be explored in the near future.

The annex to this Communication presents an overview of the practical work on Freeways that is underway.

6. CONCLUSIONS

6.1 Benefits

The work so far has identified that there are benefits to be reaped from the concept. It remains for Member States and Rail Infrastructure Managers to identify potential routes and put the concept into practice. The Commission remains willing to facilitate such action.

6.2 Further work

There remain a number of unresolved issues which clearly will require work at different levels. For the purposes of this paper these have been divided in to short and long term issues.

6.2.1 Short Term Action Required to Establish Individual Freeways

Member States

- Complete timely transposition of Directives 95/18/EC and 95/19/EC;
- Finalise licensing conditions for train operators;
- Address infrastructure charging issues (notably to ensure a competitive level of infrastructure access charges for freight);
- Initiate or participate in debate on priority issues in particular looked at from wider transport policy objectives;
- Resolve remaining border crossing issues not related to railway operations.

Infrastructure Managers

- Identify demand and appropriate routes;
- Designate Staff to lead development and implementation;
- Reach agreement with other Infrastructure Managers;
- Ensure compliance with Community law;

- Set up OSS;
- Resolve issues related to charges and path allocation (notably priority rules and reconciling infrastructure access charges with market prices);
- Initiate debate on priority issues.

Train Operators

- Identify commercial opportunities using proposed Freeways and lobby for creation of Freeways where they would benefit business;
- Develop appropriate services and resources to take advantage of the commercial opportunities;
- Ensure compliance with Community law where co-operation is envisaged with other train operators;
- Establish links with other elements of the total transport offer e.g. hauliers and terminal operators.

European Commission

- Monitor and give comfort on competition issues in appropriate terms;
- Address the issue of interfaces with non-EU networks;
- Facilitate creation of Freeways and development of services (PACT, intermodal task force,);
- Revision of TENs guidelines;
- Direct appropriate research toward enhancing the Freeway concept;
- Continue the co-ordinating role of the High Level Group.

6.2.2 Long Term Issues

In seeking to improve the commercial environment in which Europe's railways function, it is important that care is taken to avoid the sort of fragmentation which has arisen in the past. Therefore it is worth reflecting on how individual actions fit into a longer term strategy. The CER in its report on the Freeway concept identified a number of issues which need to be given further consideration. The Commission believes that the following issues are among the most important:

One Stop Shop

The potential for expansion of the One-Stop-Shop concept to enable better European rail infrastructure Management. The question of how One-Stop-Shops on different Freeways can best interact.

Cabotage

While, ideally, in the longer run it will be desirable for cabotage to be permitted in the railway as in other transport sectors, this is not immediately essential to the Freeway concept which addresses international traffic.

Charging

Further consideration needs to be given to rail infrastructure charging, both to ensure harmonisation of systems across networks but also to reduce charging distortions between transport modes.

Performance incentives and penalties

It could be desirable to focus attention on performance quality through a system of charges and rebates. This would require the establishment of a performance monitoring regime. If experience with the Freeways shows that such a system could be of use then it would be wise to develop one.

Priority in train path allocation

The existence of priority regimes has been identified as one of the reasons for poor international rail freight performance. If Member States are serious about encouraging a shift from road haulage of goods to more sustainable modes then the issue of appropriate levels of priority must be considered.

6.2.3 Research

An appropriate research and innovation strategy for rail can play a role in delivering enhanced customer service with improved efficiency and cost-effectiveness. The Community's Framework Programme, through the promotion of socio-economic studies and demonstration activities, can assist in the implementation of the Freeway concept.

6.3 Access by third countries and extending Freeways to Central and East European countries

There are likely to be significant opportunities for extending the Freeway concept beyond the borders of the Community and, in principle, where demand exists this is desirable. Therefore, in particular, candidate countries for accession to the Union will be kept informed of this initiative. Indeed the special factors which may exist on routes beyond the Community's borders, such as very long journeys and the existence of widespread rail networks, may make Freeways even more attractive. The extent to which these benefits can be captured will depend on how much of the overall concept can be implemented on routes extending beyond the Community. The key issue to be resolved is likely to be the extent to which different train operators will be able to operate across the borders of the Community. This is likely to require further consideration by the Commission and the Member States. The Commission has been informed by the Transport Ministries of Switzerland, Poland, Hungary and the Czech Republic that they are interested in exploring further the potential for Freight Freeways. The Commission proposes to take this issue actively forward in the context of the pre-accession strategy. The High Level Group will be invited to address the issues arising from the extension of the Freeways beyond the current Community borders in the second half of 1997.

6.4 The future role of the Commission and the High Level Group

The Commission believes that the High Level Group has functioned well in its role of shaping the Freeway concept and developing a degree of consensus. With the presentation of this report to the Council the work does not come to a halt. Even as work gets under way by the relevant infrastructure managers, it is desirable to attempt to ensure that incompatible structures are not newly created, while of course respecting the fact that the creation of Freeways is voluntary. Such a co-ordinating role could be played by the High Level group as well as monitoring progress and ensuring that any necessary amendments are discussed.

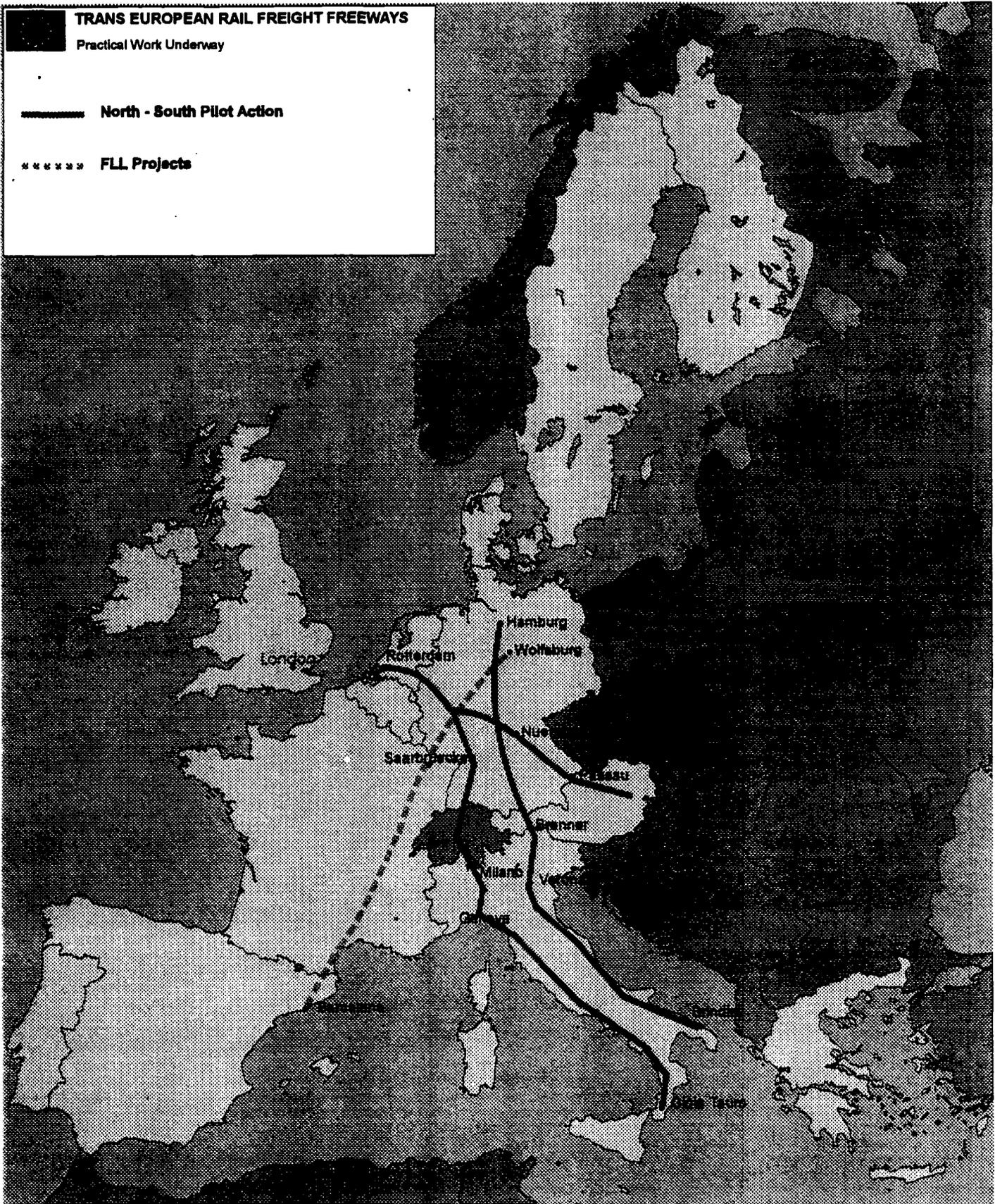
A second role which might be foreseen is that of acting as an advisory group to discuss further measures in the rail sector. The Commission believes that it could be useful to discuss proposals for further studies and legislation in the sector (in the near future, in particular with regard to railway infrastructure charging and train path allocation) with a group of experts and the High Level Group might provide such a group.

TRANS EUROPEAN RAIL FREIGHT FREEWAYS

Practical Work Underway

———— North - South Pilot Action

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ISSN 0254-1475

COM(97) 242 final

DOCUMENTS

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07 08 10

Catalogue number : CB-CO-97-260-EN-C

ISBN 92-78-20747-0

Office for Official Publications of the European Communities

L-2985 Luxembourg