Institution of MECHANICAL ENGINEERS

Current and Future Developments in EU Rail Policy

Railway Division Lecture- Presented by Keir Fitch

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The Fourth Railway Package

Completing the Single European Railway Area to foster European Competitiveness and Growth

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Characteristics of the Railway Sector

- *Passenger modal share static at 6% (despite rapid growth in high speed rail)*
- *Consumer satisfaction poor (rail services ranked 27th of 30 service industries)*
- *Public infrastructure investment → 25 billion Euro in 2009*
- *Public subsidy for PSO of 21 billion Euro in 2009*
- *Internal market still fragmented along national lines*
- *Long and costly authorisation procedures for rolling stock and undertakings*

Why do we need to act?

- *Improve competitiveness of rail with other modes in order to increase the market share of the most environment-friendly mode of transport*
- *Spend public money more efficiently on public rail transport services*

How do we move forward?

- *Encourage market entry by reducing administrative and technical barriers*
- *Open domestic rail passenger transport to competition*
- *Encourage market entry and ensure non – discrimination through a better governance of the infrastructure*

→ Fourth package to complete the market opening process and provide for legislative stability and business development visibility

How was the package prepared ?

- *Consultation of a high number (nearly 500) of stakeholders*
- *Eurobarometer survey: 25.000 citizens in 25 Member States*
- *Stakeholders workshops and conferences*
- *External support study*
- *Stakeholders studies and position papers*
- *3 Impact assessments*

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The Three Pillars of the Fourth Package

1. *To establish consistent approvals procedures for rail interoperability and safety*

2. *To open domestic passenger markets*

3. *To create better structures and governance for infrastructure managers*

Impact Assessment of the "Technical Pillar" - process

Impact assessment – main problems

Main problems:

Long and costly procedures & access barriers, *caused by:*

- ✓ Ineffective functioning of national railway institutions
- ✓ Discrimination against new entrants
- ✓ Patchwork of national regulatory regimes and rules

Impact assessment – concrete examples of problems

Facts and figures:

- ✓ *fee of a safety certificate varies from 0€ up to 70 000€ and total costs for an additional vehicle authorisation between 900 000€ up to 2 €M per locomotive type*
- ✓ *procedure to receive an authorisation for a railway vehicle can last up to 2 years*
- ✓ *staff involved in interoperability issues varies from 1 person in case of smaller Member States up to 162 in Germany - some NSAs are understaffed*
- ✓ *in some national authorities a large part of staff is on secondment from incumbent operators – risk to their independence and increased risk of discrimination*

Rail Safety Directive

Proposal for a Recast

Why amend the safety Directive?

- *Migration towards a single safety certificate*
- *Task Force on national safety rules*
- *Task Force on the vehicle autorisation process*
- *EC study on responsibilities of all actors in the rail transport chain*

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Towards a single safety certificate

- *The principle was already established in the Directive in 2004*
- *ERA issued a recommendation on the migration towards a single certificate and held a workshop with stakeholders on 7 March 2012*
- *the move to a single safety certificate requires two pre-conditions to be in place:*
    - **ALL actors in the railway sector take their full responsibility under Article 4 (3) of EC Directive 2004/49 for managing, controlling and monitoring risks**
    - **There is harmonised decision making and supervision of the safety of the sector by NSAs**

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Legal Elements of the Proposal

Scope (art. 2)

The scope has been made consistent with the Interoperability Directive: exclusion of urban and functionally separated networks

Definitions (art. 3)

new definitions for light rail, manufacturer, consigner, loader, filler

Developing and Improving Railway Safety (art. 4)

→ MS and ERA should ensure that railway safety is maintained and improved.

→ MS oblige IM and RU:
- to implement necessary risk control measures;
- to apply EU and national rules;
- to establish safety management systems

→ All actors involved in the safety operations should implement the necessary risk control measures (ECM, consignor, manufacturer,…)

→ New obligations at interfaces

National rules (art. 8)

→ Removal of Annex II:
Member States may set up new national rules only if current safety methods are not covered by a CSM or as an urgent preventive measure. Draft to be submitted. Procedure in ERA regulation.

→ Member States should keep their system of national rules updated, delete obsolete rules and keep COM and ERA informed.
ERA can invite a MS to remove a national rule.

→ Member States should not adopt new national rules or set up projects that increase the diversity of the present system.

Single Safety Certificate (art. 10-11)

→ Railway Undertakings have to apply for a Single Safety Certificate to ERA, valid at the EU level

→ ERA grants the Single Safety Certificate if the RU has established its Safety Management System (SMS) in accordance with all requirements

→ RU informs NSA 3 months before start of operation. NSA can express doubts and inform ERA that takes necessary measures

→ ERA and NSAs shall cooperate in the supervision of the Single Safety Certificate

Rail Interoperability Directive

Proposal for a Recast

Reasons to amend Directive 2008/57/EC

- *Lessons learnt from 15 years of TSI development*
- *Return of experience from the vehicle authorisation process*
- *Clarification of the text of the Directive to avoid misinterpretations and translation ambiguities*
- *Updates due to the evolution of the legislative framework*

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Some of the issues identified by the Task Force on vehicle authorisation

- *Implementation of EU law: different transposition timetables and interpretations in the MSs*
- *Roles and responsibilities: different interpretations*
- *National rules: mission, unclear, inapproriate, non-transparent*
- *TSIs: to be extended to off-TEN, open points to be closed*
- *Autorisation process: long, uncertain, expensive; unnecessary repetition of tests and verifications*

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Summary of the proposed changes to the Interoperability Directive

→ ***New provisions:*** *new definitions, the concept of Vehicle Authorisation for Placing on the Market (POM), some new provisions on registers*

→ ***Clarification of existing provisions:*** *scope of the Directive, application of TSI to existing systems, TSI derogations, correction of TSI deficiencies, applicability of national rules*

→ ***Updates*** *due to the evolution of the legislation: new legislative framework on EU standardisation and marketing of products, Lisbon Treaty*

Placing on the Market of mobile subsystems and vehicles (Articles 19-20)

→ *New notion of a* ***single Authorisation for Placing on the Market of Vehicles****, issued by the European Railway Agency.*

→ *New notion of* ***Placing on the Market*** *of mobile subsystems and vehicles, which can be carried out by both railway undertakings and manufacturers.*

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***Placing in Service of Vehicles* (Article 21)**

→ Railway undertakings are responsible for the placing in service of vehicles.

→ Therefore, railway undertakings must check the technical compatibility of the vehicle with the route and the safety integration of the vehicle into the system it is meant to operate in.

→ Railway undertakings must communicate their decisions on the placing in service of vehicles to the Agency, the infrastructure managers and the national authorities concerned.

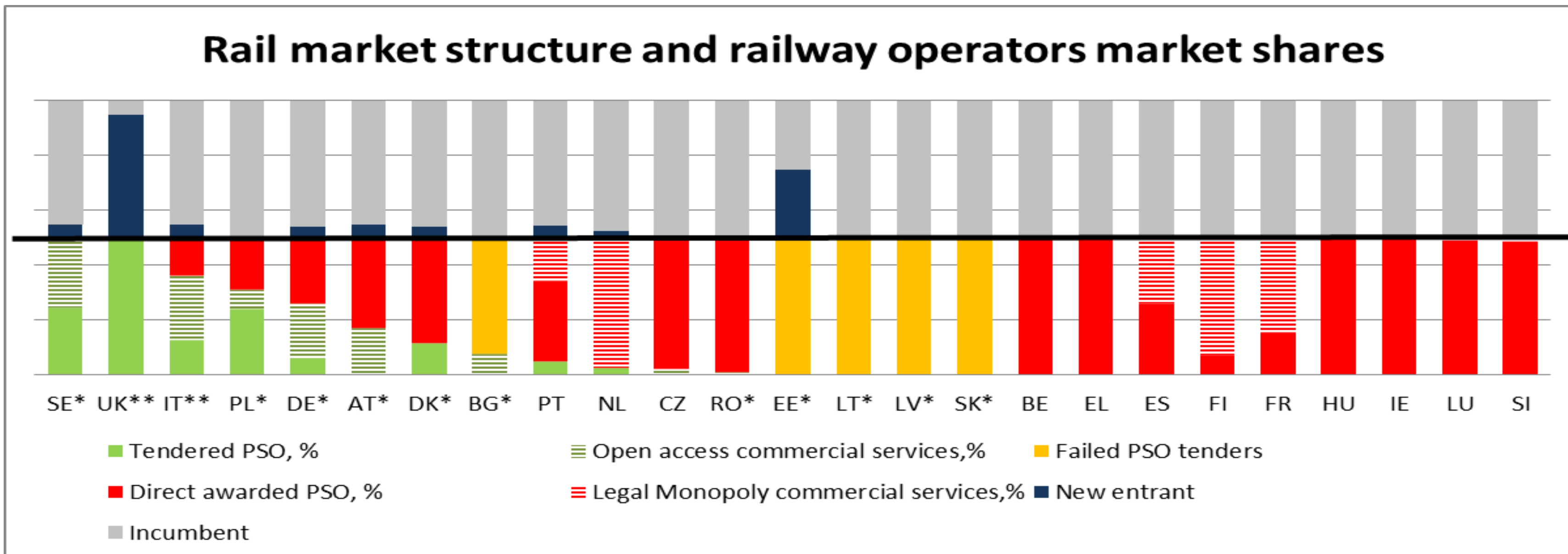
Impact assessment – opening of domestic passenger rail markets

The EU railway market:

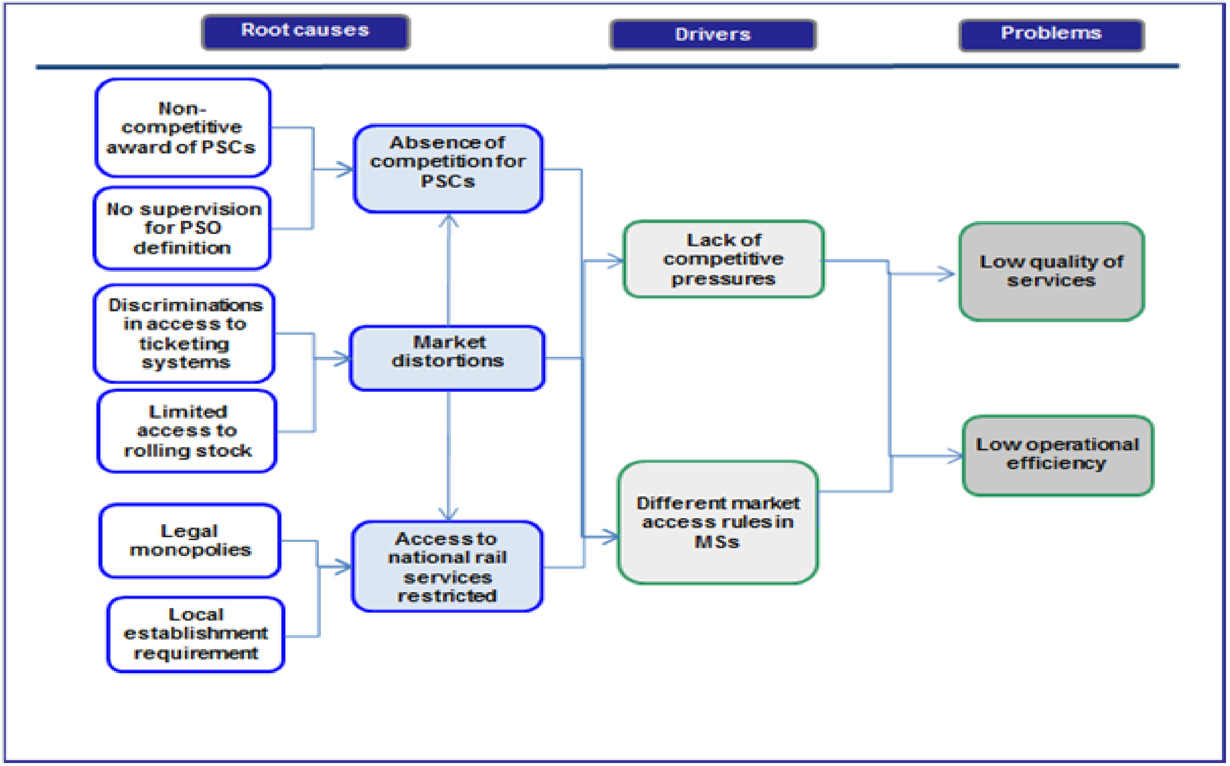
Commercial services (1/3 of EU passenger-km)

Public service obligations (2/3 of EU passenger-km)

A variety of market structures across Europe:



The problem:
low competition & different market access rules -> low quality, low efficiency



The options:

Growing divergence since the 90s: the 'best' perform even better, those 'lagging behind' perform even worse

Liberalised markets have experienced growth in almost ALL ***performance indicators***

Proposed Options:

- *Combinations of* ***open access*** and ***competitive tendering****, or* ***both***
- ***Defining PSOs first or "economic equilibrium test"***
- *Framework conditions (****ticketing*** *and* ***rolling stock****)*

The consultation:

Consultation process: railway stakeholders, Eurobarometer, Social Dialogue Committee, Committee of the Regions

Main results:

- ***71%** of Europeans in favour of more competition in rail*
- ***60%** of rail stakeholders in favour of a combination of **both open access** and **competitive tendering** for PSOs*
- *55% rail stakeholders favour "Open access subject to viability of PSCs"*
- *Social Partners prefer rather more investment in rail*
- *Regional authorities polarised concerning market access*

Analysis of impacts

Main impacts of preferred option:

- *Benefits of up to **29 billion EUR** – up to **43 billion EUR** if combined with vertically seperated structures*
- *Transitional phases soften **social impact** as 30% of rail workforce to leave in the next 10 years*
- ***Savings** of 20% for public authorities*
- ***Prices and fares** – downward pressure on fares in commercial services*

Impact assessment on infrastructure governance

Impact assessment on infrastructure governance 1 – Problems to be addressed

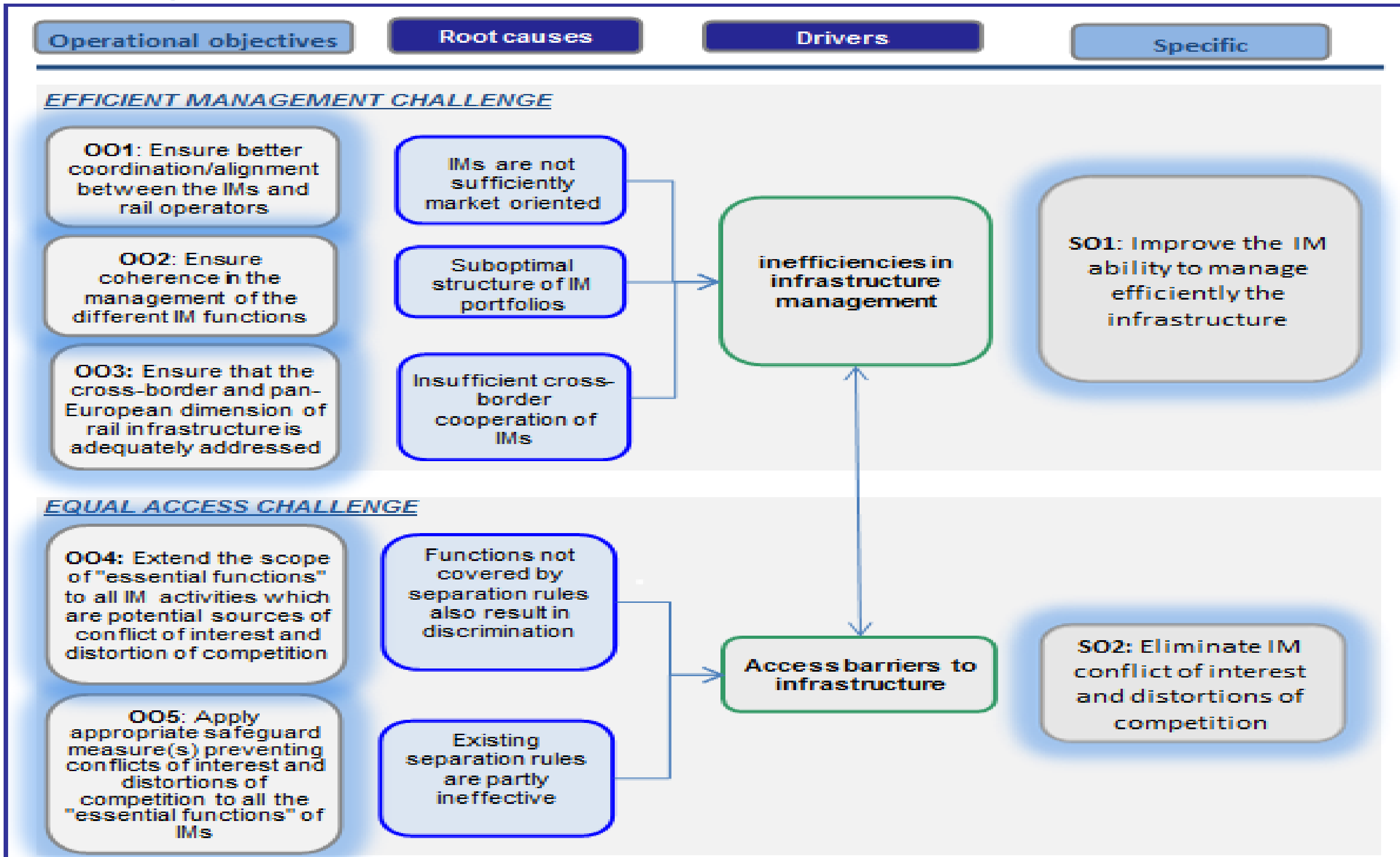
Efficiency challenge:

- *Infrastructure manager as natural monopolies may lack responsiveness to customers' needs*
- *Insufficient incentives for infrastructure managers (IM) to reduce costs and improve services*
- *Lack of cross-border co-operation*

Equal access challenge:

- *Conflict of interest of integrated IMs, having to grant non-discriminatory access to new entrants and, at the same time, take account of interests of a rail holding*
- *Discrimination opportunities*
- *Lack of financial transparency/cross - subsidisation*

Impact assessment on infrastructure governance 2 – Objectives



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Impact assessment on infrastructure governance 3 – Options considered

Problem element	Respective category of options	Policy options considered	Retained
Insufficient market orientation of IMs	**C options:** Coordination between IM and RUs	**Option C0:** Baseline – improvements as foreseen by the Recast	√
		Option C1: RUs participation to IMs' board	
		Option C2: IMs-RUs coordination bodies	√
		Option C3: Alignment through new financial incentives	
IM functions managed in an inconsistent manner	**F options:** Consistent management of key functions	**Option F0:** Baseline – the content of existing essential functions is clarified by the ECJ	√
		Option F1: New coordination mechanism between the various entities in charge of IM functions	
		Option F2: Unified IMs (all IM functions under IM responsibilities)	√
Cross-border cooperation between IM not sufficient	**CB options:** Cross-border IM management	**Option CB0:** Baseline - implementation of existing EU law (the Recast, regulation of rail freight corridors, etc.)	√
		Option CB1: Establishment of an EU network of IMs	√
		Option CB2: Creation of an EU structure integrating national IMs	
Equal access needs to be assured to all key functions	**SF options:** Functions subject to the separation requirements	**Option SF0:** Baseline – separation requirements applying only to path allocation and track access charging	√
		Option SF1: Current essential functions + traffic management separated	
		Option SF2: Current essential functions +traffic management + maintenance separated	
		Option SF3: All IM functions separated	√
Conflicts of interests in the management of IM functions management	**S options:** Way of separation of IMs from RUs	**Option S0:** Baseline - existing separation requirements for the essential functions as interpreted in the forthcoming ECJ ruling	√
		Option S1: Additional competences for regulatory bodies	
		Option S2: Clarify in EU law the concrete implications of existing separation obligations	√
		Option S3: Institutional separation	√
		Option S4: Compliance officer in integrated structures	

Impact assessment on infrastructure governance
4 – Impacts

Assessment of direct impacts (as per Annex V)

Impacts compared to the Baseline	**Scenario 1 (only efficiency measures)**	**Scenario 2 (efficiency and enforcement of separation)**	**Scenario 3 (efficiency and institutional separation)**
Enforcement costs (one off)	**0/–**	**– –** Potential scale of costs €0.17 billion	**–** Potential scale of cost €0.24 billion **–**
Transaction costs	**+**	**–** Potential cost range €0.05 bn and €0.16 bn per annum	**– –** Potential cost range €0.05 bn and €0.16 bn per annum
Regulatory costs	**0**	**0**	**+**
Discrimination	**0**	**0/+**	**++**
Cross-subsidisation	**0**	**0/+**	**++**
Efficiency	**+**	**+**	**++**

Impact assessment on infrastructure governance
5 – Quantification of impacts

Combined impacts of market opening and infrastructure governance policies – Summary of core financial estimates

All changes are illustrative estimates NPVs (bil €) to 2035, discounted at 4% to 2019	**Separation Scenario 3**	**Market opening: Scenario 1 - Savings**	**Market opening: Scenario 2 - Reinvestment**	**Combined impacts: Scenario 1 - Savings**	**Combined impacts: Scenario 2 - Reinvestment**
	1	**2**	**3**	**4**	**5**
Transaction costs (mean estimate)	-1.37	-0.42	-0.42	-1.77	-1.77
Domestic service benefits*	5.86	29.85	21.46	43.07	33.71
International service benefits	1.07			1.05	0.89
Freight benefits	1.00			1.00	1.00
Total NPV	**6.56**	**29.44**	**21.04**	**43.35**	**33.83**

The Proposals on the Governance of the Infrastructure Manager and the Opening of Domestic Passenger Markets

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A better governance for infrastructure

Efficiency challenge:

- *Infrastructure manager as natural monopolies may lack responsiveness to customers' needs*
- *Insufficient incentives for infrastructure managers (IM) to reduce costs and improve services*
- *Lack of cross-border co-operation*

Equal access challenge:

- *Conflict of interest of integrated IMs, having to grant non-discriminatory access to new entrants and, at the same time, take account of interests of a rail holding*
- *Discrimination opportunities*
- *Lack of financial transparency/cross - subsidisation*

Governance Proposals

- *All infrastructure management functions in the same hands (unified IM)*
- *Coordination body for infrastructure managers and users*
- *Establish EU network of IM's for international coordination*

- *Institutional separation of infrastructure and transport operations by 2019 to remove conflicts of interest*
- *Possibility to keep integrated structure for a transitional period and under strict independence rules (based on the experience of the ITO model in Energy)*

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Governance Proposals (I)

- *Art. 63(1) of Dir. 2012/34/EU: Rendez-vous clause*
- *Art. 7: Infrastructure managers to fulfil all necessary functions*
- *Art. 3(2): Definition of the functions: development, operation, maintenance*
- *Art. 7: Preferred model institutional unbundling, no return to integration after entry into force of the Directive*
- *Art. 7a: Effective independence of an IM within a vertically integrated undertaking: legal independence, no mutual shareholding, strict rules for financial relations*

Governance proposals (II)

- **Art. 7b: Independence of staff and management:**
  - *Following closely Annex V of COM189(2006) and Chinese walls of Directives 2009/72 and 2009/73*
  - *In addition rules on remuneration of managers*
- **Art. 7c: Verification of compliance**
  - *Upon request of a MS or ex officio, Commission verifies whether 7a and 7b are implemented and this ensures level playing field and absence of competition distortion*
- **Art. 7d: Coordination Committee for the network**
- **Art. 7e: European Network of Infrastructure Managers**

Domestic Rail Passenger Market Proposals

- *Art. 10: Open access for all EU operators to all markets, including domestic passenger markets*
- *Art. 11: Right of access may be limited to protect economic equilibrium of public services*
- *Test to be done by regulators, as for international services*
- *Article 38(4): Time frame for economic equilibrium test*
- *Art. 13a: Possibility of integrated ticketing schemes between passenger operators, in a way that does not distort competition*

Completing the Single European Railway Area to foster European competitiveness and growth

Social dimension of the initiative

- *Railway undertakings account for some 800 000 worker*
- *More indirect employment in manufacturing, rail-related services*

- *Impact of the measures will depend on interaction of the expected efficiency gains (up to 20%) with high number of retirements due to rapid ageing of the rail workforce.*
- *30% of rail workforce to retire in the next 10 years with risks of shortage .*

- *New entrants are sources of job creation (e.g. 1.000 employment with the launch of NTV in Italy)*
- *Transfer of workers between PSC contractors required in specific conditions but MS always permitted to impose*

Amendment of Regulation 1370/2007

Definition of Public Service Obligations (PSO)/scope of Public Service Contracts (PSC)

- *Competent authorities (CA) to define objectives of public transport policy in public transport plans*
- *PSO to be consistent with public transport plans*

Amendment of Regulation 1370/2007

Definition of Public Service Obligations (PSO)/scope of Public Service Contracts (PSC)

- *Specifications of PSO and their scope of application to comply with various criteria (mainly based on Treaty principles) in view of achieving objectives of public transport plans:*
  - *Appropriateness (suitable means?)*
  - *Necessity and proportionality (services envisaged and provided by the market not sufficient?)*

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Amendment of Regulation 1370/2007

Definition of Public Service Obligations (PSO)/scope of Public Service Contracts (PSC)

- *Specifications of PSO and related compensation of the net financial effect of complying with them to:*
  - *Achieve public transport policy objectives most cost-effectively*
  - *Financially sustain provision of public passenger transport in the long term*

- *Stakeholders to be consulted on draft public transport plan and draft PSO specification*

Amendment of Regulation 1370/2007

Definition of Public Service Obligations (PSO)/scope of Public Service Contracts (PSC)

For rail only:

- *Compliance with assessment based on criteria and procedure controlled by rail regulatory body*
- *Maximum annual volume of PSC (in terms of train-km) higher value of either 10 million or 1/3 of total national rail passenger transport volume under PSC*

Amendment of Regulation 1370/2007

Award of PSC

- *Deletion of Art 5(6)➔ mandatory competitive award for rail transport*
- *Other possibilities of direct award (internal operator, small scale contract, emergency measure) are not modified*
- *Threshold for small scale PSC in rail: €5.000.000*
- *CA to make available all relevant information for establishing a bid (passenger demand, costs, revenues, rolling stock specifications, etc.)*

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Amendment of Regulation 1370/2007

Award of PSC

- *Mandatory tendering for rail from 3 December 2019*
- *Transitional period until 31 December 2022 for rail PSC directly awarded between 1 January 2013 and 3 December 2019*
- *In order to increase competition CA may decide before launching the tender procedure to limit the number of contract lots to be awarded to the same railway undertaking*

Amendment of Regulation 1370/2007

Framework conditions

- *Competent authorities to ensure fair access to rolling stock so that new entrant operators are able to take part in tenders*
- *Where there is no well functioning market for rolling stock, CA to take the residual value risk of the rolling stock, if operators intending to participate in tender request this.*
- *CA can choose most appropriate means to comply with this requirement while respecting EU law (state aid rules):*
  - ❑ *managing its own fleet,*
  - ❑ *providing a bank guarantee,*
  - ❑ *take-over guarantee*
- *Commission to adopt implementing measure defining details of procedure to be followed (introduction of committee procedure in Regulation - SERAC)*

Amendment of Regulation 1370/2007

Framework conditions

- *Enhanced transparency on date and duration of awarded PSC in annual reports of CA for better bidding capacity management of RU*

- *To ease social impact of opening cross-sectorial legislation (e.g. Directive 2001/23) or CA determine transfer of workers between PSC contractors (no legislative modification)*