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Subject:	4th Railway Package: <ul style="list-style-type: none">• Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail.• Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure.- Preparation of an informal trilogue

Introduction

On 30 January 2013, the Commission presented the fourth Railway Package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area, contributing thereby to an increase in the modal share of rail in intra-EU transport.

More specifically, the main objective of this legislative package is to enhance the quality and efficiency of rail services by removing remaining legal, institutional and technical obstacles, fostering the performance of the railway sector and its competitiveness.

This legislative package can be divided in two pillars: a "technical" and a "market" pillar.

An agreement on the technical pillar was reached with the European Parliament in June 2015. The Council position at first reading was adopted as an "A" item at the TTE Council on 10 December 2015. It was transmitted to the European Parliament on 18 December 2015 with a view to its announcement at the January plenary session.

In December 2014 and October 2015, a general approach was adopted on the three files of the market pillar, i.e. the proposal for a Directive amending Directive 2012/34/EU establishing a Single European Railway Area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure (the "Governance Directive"), the proposal for a Regulation amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (the "PSO Regulation") and the proposal for a Regulation repealing Regulation (EEC) No 1192/69 on common rules for the normalisation of the accounts of railway undertakings.

Work within the European Parliament

The European Parliament's Committee on Transport and Tourism appointed Mr David-Maria Sassoli (IT/S&D) for the Governance Directive and Mr Wim van de Camp (NL/EPP) for the PSO Regulation. The vote in the TRAN Committee took place on 17 December 2013 and the European Parliament voted the outcome of its first reading in plenary on 26 February 2014.

Work within Council bodies

Under the Luxembourg Presidency, the examination of the European Parliament amendments on the Governance Directive and PSO Regulation took place at the Land Transport Working Party meetings on 22, 23, 27 and 28 October 2015, as well as on 6, 10, 19, 25 and 27 November 2015.

Following the concerns/requests expressed by the European Parliament at the trilogues on 15 December 2015, the Dutch Presidency presented several compromise proposals at the working group meetings on 12 and 14 January 2016. The Presidency revised some of its compromise texts to take into account the comments made by delegations at those meetings. Those compromise texts are included in the fourth column of the tables in ADD 1 and 2.

UK maintains a parliamentary scrutiny reservation on the three proposals of the market pillar.

Items to be discussed at the next trilogues

Five trilogues have already taken place under the Luxembourg Presidency (29 October, 12 November and 15 December). For those trilogues, the Presidency's mandate was rather limited, as few compromise proposals were going beyond the general approach text. As it is the intention of this Presidency to reach an agreement with the European Parliament by Easter 2016, the Presidency is requesting some additional flexibility from delegations in order to be able to present some concrete text compromise proposals to the European Parliament at the trilogues of 26 and 28 January, as set out in ADD 1 and 2.

a) PSO Regulation

Following the three trilogues which took place under the Luxembourg Presidency on the PSO file, it appears that the following issues are key to secure an agreement with the European Parliament:

- public transport plans,
- social provisions,
- conditions for direct award of public service contracts ("PSC"), including validation of the assessment made by the competent authority to award the PSC,
- non-discriminatory access to rolling stock.

The Presidency is therefore making the following suggestions on those specific issues, while safeguarding the key principles underlying the text of the general approach.

1. Public transport plans (line 65)

The Presidency text proposal on this issue ensures that policy documents existing in the Member States may be used, thereby avoiding the creation of a new set of documents which would lead to unnecessary administrative burden with little added value. The format and content of such policy documents are therefore set by each Member State, as they find most appropriate.

Following the comments made by several delegations at the working group, the reference to the principle of necessity has been deleted since (i) it is actually implicitly covered in the notion of proportionality and (ii) a reference to cost-covering and non cost-covering services has been included in this provision. The Presidency will indicate to the European Parliament that the above compromise proposal is on the table provided that the European Parliament drops its quantified approach of PSC (amendment 69).

2. Social provisions (line 114)

At the trilogues, the European Parliament has repeatedly stressed the importance of its amendments on social provisions. The Presidency has therefore drafted three recitals on this item: (i) application of binding social standards to avert the risk of social dumping, (ii) reminder that the rules applicable under Directive 2001/23/EC on the transfer of staff apply to the rail services, and (iii) consideration of the need for appropriate measures concerning the safeguarding of employees' rights.

3. Direct award conditions

The European Parliament is of the opinion that the general approach text includes too many derogations to the rule of competitive tendering. The first indent of the derogation foreseen in Article 5(3a) was much criticized by the European Parliament for being too vague and too subjective. The European Parliament also indicated that a contract duration of 7 years was too long. The compromise proposal presented by the Presidency takes those two comments into account (line 129).

It should also be stressed that the validation by an independent body of the assessment made by the competent authority to award a PSC directly under Article 5(4a) is an important element for the European Parliament to ensure legal certainty. As a large number of delegations opposed the inclusion of the concept of validation in the text, the Presidency removed it (lines 141 to 150).

4. Access to rolling stock (lines 163 to 179)

The Presidency will explain to the European Parliament that delegations have serious concerns regarding the budgetary impact that compulsory measures concerning rolling stock may have on their national budget. Therefore, the compromise text put forward by the Presidency on rolling stock is the absolute red line for the Council. The compromise proposal includes the text of the general approach, as well as a non-exhaustive list of measures of a voluntary nature which the competent authorities may wish to take. The compromise text also provides for the consideration of the presence of a market for rolling stock leasing companies.

b) Governance Directive

As regards the Governance file, the Presidency has identified the issues below as key for the European Parliament, and suggests the following approach:

1. Social provisions (line 135)

As in the PSO file, the European Parliament insists on including some texts relating to the protection of railway staff. The Presidency has therefore prepared a rather general recital on this subject, which takes into account the comments made by delegations at the working group.

2. Prohibition of double mandates (lines 181)

Another issue which is of great concern to the European Parliament is the extension of the prohibition of double mandates to the members of the management board and/or supervisory board of a holding company. The Presidency took good note of the fact that several delegations were still scrutinizing the practical effects of the compromise text.

3. Through-ticketing (lines 161 and 313)

The Presidency has included a recital to take into account the European Parliament's idea on this topic. The revised wording reflects the comments made by delegations at the working group.

The question of the unlimited access to be granted to **high speed services** is an essential element for the European Parliament as well, but the Presidency decided not to table a compromise proposal on this issue for the next trilogue given the limited time available to test it with delegations.

A compromise relating to the **cooperation between regulatory bodies** in relation to international services had also been requested by the European Parliament. The Presidency has therefore presented a compromise text to the working group, and delegations indicated that they could accept it (line 367).

The Presidency also revised some of its text proposals in relation to the **independence of the infrastructure manager** (lines 176, 184 and 188), as well as to the **scheduling of maintenance works** (lines 204 and 343) to take into account most comments made by delegations at the working group.

Conclusion

Following the above, the Permanent Representatives Committee is invited to examine the Presidency compromise proposals on the specific above mentioned issues and to endorse the Presidency compromise proposals appearing in the fourth column of the tables in ADD 1 and 2, while mandating the Presidency to negotiate with the European Parliament with a view to reaching a second reading agreement on this file.