

# EPF & 4th RAILWAY PACKAGE: WHAT DOES IT MEAN FOR PASSENGERS?

## 1/ Background elements:

From 2001 to 2015, technical and political framework established by European legislation with common objectives and points in the public transport sector (freight and passenger, open access services and contracted services):

- Customer orientation and costs control through **progressive liberalization**: “Competition improves rail attractiveness and efficiency”;
- Clarifying relationships between Member States and (former) historic public monopolies with **progressive separation** of Infrastructure Manager activities and Railway Undertaking activities;
- Linking rail market opening with **technical specifications** ensuring interoperability and safety.

Main steps so far:

- 1<sup>st</sup> Railway Package (2001): **international rail freight** liberalized and creation of the European Rail Agency (ERA) in charge of interoperability and safety;
- 2<sup>nd</sup> Railway Package (2004): **domestic rail freight** liberalized and first Technical Specifications of Interoperability (TSI) issued by the ERA to harmonize European railway systems and interfaces;
- 3<sup>rd</sup> Railway Package (2007): **international rail passenger transport** open to competition; first set of rail passenger rights established by Regulation 1371/2007; “Public Service Obligations” (PSO) Regulation 1370/2007 issued introducing competitive tendering for contracted passenger services, but excluding rail services from its scope.
- April 2009: The European Parliament asks the European Commission to prepare the last step i.e. **opening domestic rail services to regulated competition** through competitive tendering= 4<sup>th</sup> Railway Package.

## 2/ The 4<sup>th</sup> Railway Package:

With two pillars:

- **“Technical pillar”**: with two directives on interoperability and safety and a regulation on ERA related activities;
- **“Political pillar”**: with a directive on “governance” (separation of infrastructure and operation activities in integrated public undertakings) and a modification of the PSO

Regulation 1370/2007 to introduce competitive tendering for the award of contracted rail services.

The draft issued by The European Commission in 2013 has been strongly amended by the European Parliament in 2014 and 2015 and in addition watered down by the Council of Ministers Agreement in October 2015.

**As for the “Technical Pillar”**, an agreement has been reached which foresees:

- Strengthening ERA’s competences for delivering rail vehicles **safety certificates** at the European level in coordination with Member States national safety authorities;
- Rail vehicles **technical homologation** issued by ERA coordinated across the entire European Union.

This is a very positive progress considering lengthy and costly homologation processes applied until now in each Member State creating strong access barriers and delays, which negatively impact interoperability and competitiveness of rail undertakings compared with other modes, road especially.

This step is essential to the creation of a European rail market and provides the basic technical conditions with a view to networks integration facilitating cross border services and competition.

**As for the “Political Pillar”**, the statement is not so encouraging, as the Council Agreement reached in October 2015 has strongly modified the competitive approach proposed by the Commission, pursuant to the Parliament’s resolution from April 2009.

The main changes are concerning the **competitive award of public rail contracts through tendering**, which was the rule in the original version of the PSO Regulation, and has now become the exception, which is **a real concern from the passenger point of view**, considering:

- **The positive effect of market opening** in different European countries (Great Britain, Germany, Sweden, The Netherlands, ...) with more trains, more frequent services, new rolling stock, customer orientation, cost control, more transparency between competent authorities and rail undertakings through demanding public service contracts;
- **The increase in passenger numbers** carried by train (regional lines in Germany, rail franchises in Great Britain...)
- **The negative impact of market closure** in other Member States leading to closing rail lines, increased costs and a decline in the quality of service (France: the shrinking classical main line “TET network”, **increased costs of regional services**, rail services transferred to road, etc.); compared with Germany, where subsidies per train-km to

regional services by Länder decreased from 3% in 10 years, they increased by 22% in France in the same period...

In addition, the **transition period** to implement competitive tendering could be extended until 2026, which will postpone real market opening to 2036 in countries reluctant to open their rail market as directly awarded contract before this date could last 10 more years. The consequence is to leave regulated competition to **subsidiarity**.

These provisions will cause **legal uncertainty** as very vague criteria to justify direct award will certainly be challenged by different stakeholders (excluded operators, passenger associations) creating a very negative atmosphere detrimental to rail transport.

**As for the Governance directive** regulating relationships between infrastructure and operating tasks in integrated rail companies (such as DB or SNCF for example), it has also been watered down by the Council of Ministers put under pressure by their Governments which are keen to protect their national operator. “Chinese walls” between these two activities are no more on the agenda and safeguards to be introduced should not interfere with the structure of undertakings, while measures to ensure the independence of infrastructure managers should be limited to their essential functions, i.e. path allocation and infrastructure charging.

This approach will inevitably create **competition distortions**, as integrated companies will profit from their position of infrastructure manager. This is also no good news for passengers, as shown in Germany where the Association of rail authorities BAG-SPNV is claiming against increasing track- and station access charges to be paid to DB Netz, which are supported by regional services only, or exemplified by the pressure put by the German Kartellamt (competition authority) on DB Distribution because of different treatment concerning its competitors in ticket selling to customers.

Bad news for the passenger too: the obligation of implementing an European-wide integrated information and ticketing system has also been abandoned in the directive by the Council Agreement.

### **3/ To conclude – “Curbing mobility is not an option”:**

**Several operators on a network, operated privately or public are a basis for customers to make a well informed choice between different offers.** A level playing field for all operators is necessary where new entrants can provide new services and a better quality in a competitive environment.

According to the request formulated by the European Parliament in its decision from 2009, the introduction of regulated competition should have led to better services for passengers, helping to implement the **necessary modal shift** from road to rail for environmental and efficiency reasons stated in the 2011 White Paper on transport, which key goals have been

confirmed recently by the European Parliament and **include a 50% shift in medium distance intercity passengers journeys from road to rail and waterborne transport by 2030.**

In the present version of the 4<sup>th</sup> Railway Package, it is to be feared that these objectives will not be reached – at least in countries where, for lots of reasons, rail services are endangered by protectionist measures leading to service reductions and lines closures, detrimental to both passengers and taxpayers.

There is here an obvious contradiction between ambitious objectives to be fulfilled (White Paper) and tools to implement them (4<sup>th</sup> Railway Package).

In such a situation where the Council has chosen to protect national public rail operators and integrated companies against Parliament's and Commission's options, we can expect a strong perverse effect paving the way for an aggressive "Road Package" now on the European agenda.

MQ.

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