
EUROPEAN COMMISSION



DIRECTORATE GENERAL ENERGY AND TRANSPORT

**AMENDMENTS TO THE RAIL ACCESS
LEGISLATION IN THE FRAMEWORK
OF THE RECAST OF THE 1ST
RAILWAY PACKAGE**

Contract No TREN-08-ST-SI2.502764

Excerpt from a Study prepared for the European Commission by
PriceWaterhouseCoopers Advisory Consortium

March 2009

Stakeholders Consultation – Overview

1 Stakeholders consultation

1.1 Objectives

In order to perform the assigned study for the impact assessment of the recast of the 1st railway package, a stakeholder consultation was carried out.

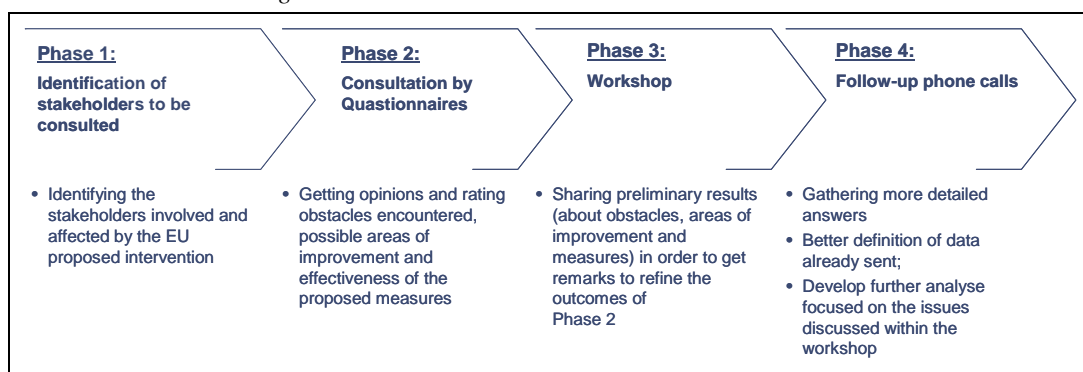
The objectives of the consultation:

- fine-tuning the problem analysis:
 - identification of specific obstacles that hinder the full liberalisation of the international rail market and the development of rail related services;
 - identification of areas of the EU legislative framework to be improved in order to ensure the full liberalisation of the rail market and in order to foster the development of rail related services;
- getting opinions on the effectiveness of the measures proposed to reach the related objectives;
- checking the willingness of stakeholders to adopt specific measures;
- fulfilling the baseline scenario by mapping the measures already implemented in MSs; gathering quantitative data not publicly available and/or hard to find in literature.

1.2 Stakeholders Consultation phases

The consultation was structured in four phases, as shown by the following figure:

Figure 1-1: The Stakeholders Consultation Action Plan



Each phase is explained in the following paragraphs.

1.2.1 Phase 1. Identification of stakeholders to be consulted

According with the Commission requirements, the consultation process involved the following categories of stakeholders, categorized in the following 4 groups:

1. Authorities: Rail regulatory bodies, Competition authorities and Ministries of Transport;
2. Infrastructure Managers;
3. Railway undertakings, including incumbents and newcomers;
4. Other stakeholders: Railway manufacturers, Wagon keeper and rail car leasing companies, Terminal operators, Operators of maintenance workshops and other providers of rail related services, Customer and rail passenger organizations, Railway workers' organisations.

Almost 380 stakeholders from EU-25 (EU-27 with the elimination of Cyprus and Malta that have no railway) were involved in the process.

1.2.2 Phase 2 – Consultation by Questionnaire

The first approach with the stakeholders was to consult them through a Questionnaire sent via email.

Aim of this phase was to obtain basic information for the Impact Assessment study, in particular:

- to complete the problem analysis;
- to get opinions on the effectiveness of each measure proposed to reach the related objectives;
- to fulfil the baseline scenario;
- to get preliminary information on specific impacts of the proposed measures.

In order to achieve such objectives, the questionnaire was structured in four sections focused on obstacles hindering the opening of rail transport market, area of the EU legislative framework that could be improved to facilitate rail market opening and to ensure the development of rail related services, and the identification of most important measures and of measures already applied.

Answers received

Out of almost 380 questionnaire sent, we received 73 answers. The answers represent an exhausted sample of the stakeholder from almost all Member States (contributions came from all EU Member States involved in the consultation process, except Luxemburg and Greece). Thus, 95% of the European railway traffic is represented in relation to km of tracks.

The following table presents a synthesis of the distribution of the total number of questionnaire received by the 10 different stakeholder clusters involved in the consultation.

Table 1-1: Distribution by type of stakeholder's involvement

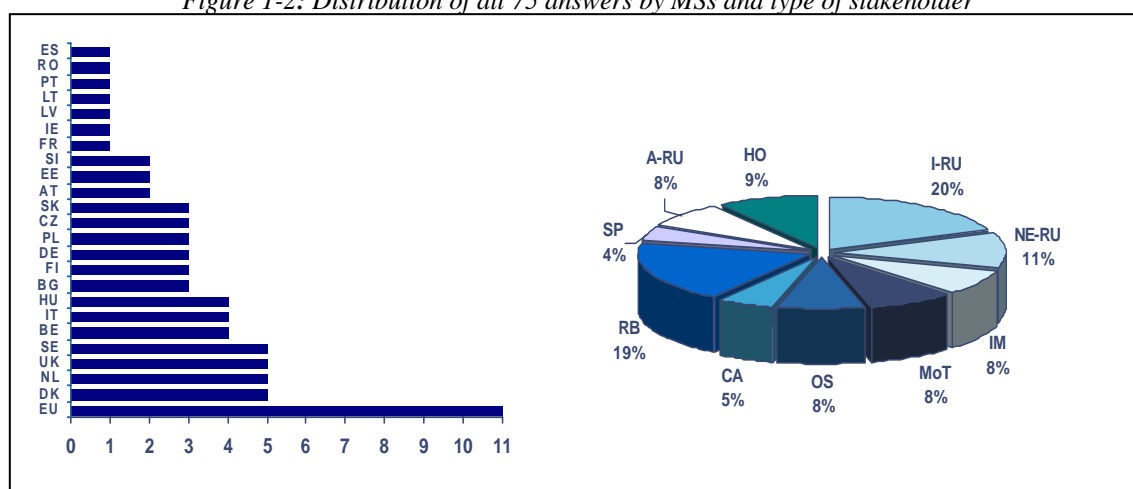
| | Cluster | Questionnaires received |
|-------|---------------------------------|-------------------------|
| I-RU | Incumbent Railway Undertaking | 14 |
| NE-RU | New Entrant Railway Undertaking | 8 |
| IM | Infrastructure Manager | 6 |
| MoT | Ministry of Transport | 6 |

| | Cluster | Questionnaires received |
|------|-------------------------------------|-------------------------|
| OS | Other Stakeholders ¹ | 10 |
| CA | Competition Authority | 5 |
| RB | Regulatory Bodies | 12 |
| SP | Service Provider | 2 |
| A-RU | Association of Railway Undertakings | 5 |
| HO | Holding Company | 7 |
| | TOT | 75 |

Source: PwC elaboration (2008)

In particular, 16% of the answers were received by Regulatory Bodies and 29% by the Railway Undertakings (composed by 18 % of Incumbents and 11 % of new Entrants). The following figure shows the distribution of different answers by Member States and by clusters of the stakeholders.

Figure 1-2: Distribution of all 75 answers by MSs and type of stakeholder



Source: PwC elaboration (2008)

As it could be inferred from the figures presented before, the feedbacks are representative of the wide-ranking of stakeholder's clusters and represent almost all Member States. Filled questionnaires were received from each cluster considered and at least each cluster was represented by a MS.

1.2.3 Phase 3 - Workshop

The main purposes of the workshop were:

- to share with the stakeholders the preliminary results obtained with the analysis of the questionnaires reported in the previous paragraph and get feedback s comments and remarks;
- to check with the representatives of the industry the pros and cons of delivering specific measures through soft law.

In other words, the aim of the workshop was to fine tune the results obtained with the analysis of the answered received through the questionnaires.

¹ This cluster includes: Capacity allocators, Railway manufacturers; Wagon keeper and rail car leasing companies; Terminal operators; Operators of maintenance workshops and other providers of rail related services; Customer and rail passenger organisations; Railway workers' organisations.

The workshop was structured in two sessions.

Part I – Results of the analysis of questionnaires

The purpose of this part of the workshop was essentially to get feedback, remarks and comments on the results of the analysis of the questionnaires concerning the ranking of obstacles that hinder the full liberalisation of the rail market, on the areas of the EU legislative framework that could be improved in order to facilitate market entry and on the importance of implementing the measures proposed in order to reach the related objectives.

Preliminary results of the analysis were presented so to:

- give evidence of main obstacles to rail market opening reported by the different countries (including obstacles that were not listed in the questionnaire, but were added by the stakeholders);
- give evidence of main areas in which, according to the results of the questionnaires, the EU rail legislative framework should be improved in order to ensure the opening of the market and the development of rail related services (including areas that were not listed in the questionnaire, but were added by the stakeholders);
- highlight measures that resulted to be already implemented by each country;
- report the measures that resulted to be more important to reach the specified objectives;
- highlight additional measures that had been reported as very important to achieve the proposed objectives even if not originally listed in the questionnaire.

During the workshop stakeholders were required to provide feedbacks on:

▪ Obstacles:

- the ranking (Major, Minor) given to the obstacles;
- the effect of the full implementation of the first railway package on the listed obstacles (complete removal, partial removal, no effect).

▪ Areas of Improvement:

- the ranking (Very Desirable, Desirable) given to the areas of improvement;
- the effect of the full implementation of the first railway package on the listed areas of improvement (complete improvement, partial improvement, no effect).

▪ Measures:

- the ranking (Very Important, Important, Less Important) given to the measures;
- the effect of the full implementation of the first railway package on the listed areas of improvement (complete improvement, partial improvement, no effect);
- the Pros and Cons related to the possibility to deliver the following rules through soft law (voluntary approach).

During the workshop a discussion on the topics above took place. Stakeholders were invited to send additional comments by email making use of template for response distributed during the workshop.

Part II – Impact Analysis

The purpose of this part of the workshop was essentially to provide the stakeholders with the

methodology that will be adopted for the Impact Analysis and to explain how their contributions will be used in the Analysis.

1.2.4 Phase 4. Follow-up phone calls

In order to develop in further details contributions and remarks on the main topics discussed at the workshop and on the preliminary results of the questionnaires, several stakeholder, who asked for it at the end of the workshop, have been interviewed in one-to-one call meeting. All the contributes, feedbacks, remarks pointed out through questionnaires, workshop and phone calls have been analysed in detail and considered as an important starting point for fine-tuning the problem analysis and for the analysis of the impacts. Next paragraphs present findings of the stakeholder consultation process.

1.3 Result of the stakeholder consultation

This section reports a synthesis of the main results of the stakeholder consultation process in relation to the obstacle, area of improvement and measures identified.

1.3.1 Synthesis of the main results: Obstacles

The table below reports the average position of stakeholders (major/minor ranking) on obstacles that hinder the liberalisation of the market and the development of rail related services. Obstacles highlighted in yellow resulted to be major obstacles for the development of the rail market itself more than specifically related to market opening and development of the rail related services. The results have been used to refine the problem analysis.

Table 1-2: Ranking and Comments on Obstacles gathered

| Obstacle | Ranking | Comments from Stakeholders |
|---|---------|---|
| Discrimination in access to rail related services (e.g. in terminals, shunting yards, rolling stock maintenance, etc.). | Major | <ul style="list-style-type: none"> ▪ D. 2001/14/EC guarantees non-discriminatory access if there is no viable market alternative. This has to be implemented in all MSs, thus this obstacle seems to be partially due to the not complete implementation of the 1st railway package. Thus, obstacle's intensity varies from MS level of the 1st RP implementation and how such implementation is tackled by responsible bodies. It is not a major obstacle in all EU MSs. ▪ Access conditions are not transparent (i.e. description of infrastructure). ▪ Need easy open access to tracks, last mile and terminals and essential services therein. |
| The different level of implementation of the first railway package in MSs | Major | <ul style="list-style-type: none"> ▪ 1st RP is not mandatory extensive enough. ▪ In several MSs, in particular functioning RBs still have to be established. ▪ This is a very important obstacle. However, 1st RP not enough to create fully liberalised market. ▪ This obstacle is due to too much freedom of interpretation of directives' provisions allowed to MSs. |
| Insufficient administrative capacity/powers of RBs and lack of independence | Major | <ul style="list-style-type: none"> ▪ RBs need a harmonised job description and prescribed legal powers. Their partly non-independence, lack of resources and ex-post-interventions are a serious obstacle for the development of fair and non-discriminatory market access. ▪ This is partially an implementation problem. However, RB need more powers even beyond the 1st RP – and these must be consistent across EU. ▪ RBs must be put into place in each MS and be administratively and legally able to fulfil the functions that are foreseen for them in the 1st RP. |
| Weak financial situation of RUs in particular in the "new" MSs | Major | <ul style="list-style-type: none"> ▪ The weak financial situation is a problem of RU in new MS as well as in EU 15 and concerns incumbent RU as well as new entrants. ▪ The weak financial situation of incumbent RU is a consequence of not complete implementation of the 1st railway package. ▪ RU incumbents should be sold to private sector without state aids. Definitely no state aids to RUs. ▪ The weak financial situation of RU is more a problem for the development of the rail market itself than for the opening of the market. |
| Low infrastructure quality | Major | <ul style="list-style-type: none"> ▪ Major Obstacle for the development of the rail market. No obstacle to the opening of the market ▪ Trains will go slower – not so much of a problem for freight. |
| Lack of technical harmonization | Major | <ul style="list-style-type: none"> ▪ The lack of technical (and operational) harmonisation hinders the opening of the market because it causes serious hurdles for cross border operations and it limits the usage and the cross acceptance of rolling stock on the different networks. |

Stakeholders Consultation – Overview

| Obstacle | Ranking | Comments from Stakeholders |
|--|---------|--|
| | | <ul style="list-style-type: none"> Technical harmonization is needed to achieve interoperability of the European railway system and the development of rail services across Europe. This one is under development by the definition and implementation of Technical Specifications for Interoperability (TSIs). Another type of technical harmonization is also useful for the development of the interchangeability of rail products, which requires some kind of standardization on a voluntary basis. But the latter should not prevent innovation through mandatory application. Used as a market entry obstacle for passenger services, prevents NE-RUs from entering the market, using knowledge, resources or assets they have obtained. Cross acceptance of rolling stock is of major importance. TSIs on rolling stock should have first priority. Having MS safety and tech rules as well as EU ones TSI allow I-RUs to put technical barriers to NE-RUs through their owner governments. |
| Lack of investment in railway infrastructure and equipment | Major | <ul style="list-style-type: none"> The low infrastructure quality will inevitably affect the overall quality of services, which in turn will affect negatively the rail market share when compared to competing modes (for which infrastructure is highly supported). For private RU this is due to lack of liberalisation. Infrastructure – major; Equipment – minor. Infrastructure funded through multi annual contracts – could also have state aids provided complies with 1st RP and state aids rules – including separation from RUs. Equipment should not get state aids – it can be leased. |
| Failure of some MSs to fully separate ownership of IM and RUs | Major | <ul style="list-style-type: none"> Most of investment problems stem from influence of holding of integrated company, also problems with Chinese wall, i.e. confidentiality of planning and commercial data at the Infrastructure part. If the IRP is properly implemented, the objectives sought by the legislation should be implemented whatever the form of separation. The Directive set 'objectives' to be attained and MS are free to implement them in the most appropriate way. Full separation is not required in EU legislation so there cannot be any failure from MS on this point. |
| Abuse of dominant position | Major | <ul style="list-style-type: none"> Major problem: Energy (only one energy supplier useable). This issue can be tackled by existing legislation: railway and competition law. The existing law needs to be properly implemented and consequently applied. |
| Long and intransparent procedures for railway licences, as well as for safety certificates and homologation of rolling stock | Major | <ul style="list-style-type: none"> Licensing: Staff, locos, rolling stock; major market obstacle; not transparent, no time-frame, deadlines imposed. Needed an EU-wide process. Any cases of distorted competition can be properly tackled by CAs. This problem can be partially removed by the full implementation of the 1st and 2nd packages. Must be However, Text in IRP not extensive and stringent enough. Obligations for Member States not clear, time frames missing. |
| Insufficient harmonisation of principles and procedures (i.e. track access, charging scheme) at international level | Minor | <ul style="list-style-type: none"> The harmonization of principles and procedures relating to track access and charging schemes is much more complex than it may appear. In practice, the degree of public support for infrastructure will have a direct impact on the level of track access charges. For the rail sector to be able to compete with road, track access charges must remain flexible throughout Europe in order to reflect the differences between member states in the market. In the new Member States, for example, public authorities do not in general finance infrastructure, therefore IMs are obliged to apply very high charges. The question of insufficient harmonization of principles and procedures will therefore relate to these specific situations that drastically affect the level of track access charges. The question of a unified method of calculation does not appear therefore to be the solution to this problem. Moreover, it appears highly unrealistic in the present situation. Transparency is more important than harmonisation. |
| Lack of competences of RBs related to international rail services | Minor | <ul style="list-style-type: none"> This problem can be solved by the full implementation of the 1st railway package. |
| Difficult access to RB | Minor | <ul style="list-style-type: none"> This problem can be solved by the full implementation of the 1st railway package. |
| Higher prices for New entrants | Minor | <ul style="list-style-type: none"> This obstacle is a consequence of the other obstacles. Due to higher number of obstacles and variety of problems, investment burden and financial consequences are higher for new entrants. |
| Different track access agreements in each country | Minor | <ul style="list-style-type: none"> Guidelines would help removing the problem. |

Source: Questionnaires, workshop and call follow-up (2008)

1.3.2 Synthesis of the main results: Areas of Improvement

The table below reports the average position of stakeholders (very desirable/desirable ranking) on areas of the EU rail legislative framework that could be improved in order to

facilitate market opening and to boost the development of rail related services. The results have been used to refine the problem analysis.

Table 1-3: Ranking and Comments on Areas of Improvement gathered

| Area of Improvement | Ranking ² | Comments from Stakeholders |
|---|----------------------|---|
| Non discriminatory access to service facilities (e.g. terminals, maintenance workshops, shunting and marshalling yards, etc.) | Very Desirable | <ul style="list-style-type: none"> Enhance the definition of “Rail-Related Services” and make the pricing of these, when provided by a nationally or locally dominant competing operator, the subject of price regulation Larger number of services to be covered, than those listed in the Directive 2001/14/EC. Regulation of access to RRS is only necessary in monopolistic bottlenecks. This is provided by current legislation in D. 2001/14/EC. Further legislation would be counter-productive and hamper investments and market development. Implementation of the 1RP is a good step forward and should produce all expected results. Should certain obstacles remain in the coming 4-5 years; stakeholders will have better ideas on how to tackle them. Need more regulations EU-wide to avoid some RUs wriggling out of obligations and commitments, and need full list of services on which open access applies. |
| Transparency on the functioning of the institutional framework on rail market | Very Desirable | <ul style="list-style-type: none"> The Rail Market Monitoring Scheme (RMMS) was set up by the Commission to enhance transparency on the rail market. There is absolutely a need for transparency, which may be complied with through appropriate actions taken by the RMMS settled by the 1st Railway Package. |
| Incentives for sound and sustainable financing of railway system | Very Desirable | <ul style="list-style-type: none"> A stable financial architecture is essential for the proper development of the sector, particularly in new EU Member States Multi-annual contracts should be implemented in the MSs. IMs should be provided with multi-annual contracts, incentives to become more efficient. RUs incumbents should be sold off rather than given state aids legislation and them Urgent to implement article 6 of Directive 2001/14. Need to secure conclusion of MACs |
| Independence and competencies of Regulatory Bodies | Very Desirable | <ul style="list-style-type: none"> Key objective of a Regulatory Body is to ensure fair and non-discriminatory access to the rail network and to services. Therefore, the structural weaknesses of the RBs in many Member States should be addressed as a matter of the highest importance in the framework of the recast. Regulatory Bodies need to be independent and competent, but their responsibility must remain limited to the European railway system and not interfere with the non-interoperable rail systems. The inter-relation between the rail and non-rail regulation needs to be clarified (especially between the railway packages and the PRR regulation, and between the rail legislation and the PSR Regulation). Several MSs have not implemented the requirements laid down in D. 2001/14/EC. Whether the administrative powers called for by European legislation are sufficient can only be evaluated after the complete implementation in all MSs. |
| Rules between infrastructure manager and railway undertaking to allocate responsibility in case of damage | Very Desirable | <ul style="list-style-type: none"> These rules exist already within the COTIF CUI appendix. There would be no need to redraft such rules at EU level on condition the EU puts and end to its request for reservations to the CUI. If the CUI applies, sufficient legal certainty will exist on the market with some minor adaptations of the CUI (extension of its scope to national traffic and to delays as foreseen in the Passenger Rights Regulation). This question is indeed important and the eventuality of a legal framework at the EU level has to be considered. Such rules are defined under COTIF CUI appendix, which can be used and if necessary complemented without necessarily being overruled by EC new requirements. |
| Enhance independence of IM and RU | Very Desirable | <ul style="list-style-type: none"> Force governments that Infrastructure company and National operator are not managed by the same Ministry and there are no capital links between them |
| Clarification of responsibility of RB | Desirable | <ul style="list-style-type: none"> Distinction of responsibility between RBs and Competition Authorities should be made clear in Directive 14. |

Source: Questionnaires, workshop and call follow-up (2008)

² Ranking from Questionnaires/Workshop

1.3.3 Synthesis of the main results regarding the Measures included in Table 6.1.

This paragraph reports the average position of stakeholders (Very important/Important/less Important) on the measures that will be assessed. For an exhaustive overview of the results, see Annex C.

The following table presents the final evaluation of Measures within Objective 1, considering the questionnaire results, the outcome from the workshop and the further comments gathered through telephone calls.

Table 1-4: Ranking and Comments on Measures gathered

| Measures | Ranking | Pros | Cons |
|---|----------------|---|--|
| M 1 – Guidelines for the access to RRS (RB) – Soft law | Very Important | <ul style="list-style-type: none"> Clarification would eliminate distortion of the market: a clear definition of a “viable alternative” could be beneficial for RUs who currently need to justify their request for the provision of all services; in some Countries only RU can provide certain related services, while in other countries the market is potentially open to everybody. | <ul style="list-style-type: none"> Guidelines are not enough, legal rights are necessary; Risk of over-regulation and rigidifying the legal framework; |
| M 2 – Independence requirement for the management of Service Facilities | Important | <ul style="list-style-type: none"> For most of the facilities, access must be provided on a non discriminatory basis according to existing legislation. For railway stations and marshalling yards special attention should be given and a legal instrument is welcome. | <ul style="list-style-type: none"> No main comments |
| M 3 - “Use-it-or-lose” | Very Important | <ul style="list-style-type: none"> Use-it-or-lose-it-provision for rail-related service facilities are important for the planning and bidding of passenger services; Important to prevent existing operators from grandfathering time table slots (avoids problems of “artificial” saturation of the network). | <ul style="list-style-type: none"> Affecting rights of entrepreneurial freedom of owner’s decision-making |
| M 4 - Use of electrical supply equipment. | Very Important | <ul style="list-style-type: none"> It could generate positive effects if electrical supply equipment is managed by an IM not fully separated from incumbent RU; it is preparatory for granting each RU the possibility to negotiate its own contract with the Energy supplier (major cost factor). | <ul style="list-style-type: none"> It would not allow RU to negotiate their own contract with energy providers until metrics are inserted in the locos. |

Source: Questionnaires, workshop and call follow-up (2008)

The following table presents the final evaluation of Measures within Objective 2, considering the questionnaire results, the outcome from the workshop and the further comments gathered through telephone calls.

Table 1-5: Ranking and Comments on Measures gathered

| Measures | Ranking | Pros | Cons |
|--|----------------|--|--|
| M5- Network statement legally binding | Important | <ul style="list-style-type: none"> The Network Statement is meant to be a helpful and flexible tool providing interested parties with the relevant information. This measure creates the risk of replacing the practical usage of the document with a document drafted by lawyers in ‘legal speak’. A legally binding document is however easier to enforce. IM would weaken others position. | <ul style="list-style-type: none"> Clarity of information and the facilitation of access are more important than the legal form of the statement. |
| M 6- list of procedures for dispute resolution | Very Important | <ul style="list-style-type: none"> Very important, since there is lack of clarity concerning the matters that should be dealt by RB and those that should be dealt by CA; Helps all RUs and customers know all details about | <ul style="list-style-type: none"> Transparency is important, not more detailed provisions; The rail market will not be more open if more information is to be put in the NS |

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| Measures | Ranking | Pros | Cons |
|--|----------------|--|--|
| (IM) | | <ul style="list-style-type: none"> network and services; Transparency and more legal certainty. | (other tools are needed to allow market forces to develop the rail market). |
| M 7 – publication of price information for RRS (FM) | Very Important | <ul style="list-style-type: none"> This measure could introduce transparency: access to services is affected by higher prices applied to new entrants. | <ul style="list-style-type: none"> Difficult implementation (some services are not managed directly by IMs); It would happen in any case in the industry. |
| M 8 - Template for capacity request (IM) | Less Important | <ul style="list-style-type: none"> No major comments. | <ul style="list-style-type: none"> Template form for capacity request is not the main topic. |
| M 9 - International path allocation procedures | Important | <ul style="list-style-type: none"> This measure could help the standardisation of path allocation procedures: in some MSs the undertakings applying for paths have to present both license and safety certifications; in some other Countries, the license is enough; Helps all RUs and customers to know all details about network and services. | <ul style="list-style-type: none"> Heterogeneous scenario as a barrier to the implementation: allocation procedures vary from Country to Country. |
| M 10 - NS in a second official language (IM) | Very Important | <ul style="list-style-type: none"> Very useful for information flow and communication; Chance to collect all NSs on the same website; | <ul style="list-style-type: none"> High costs |
| M 11 - Information on access to service facilities (IM) | Important | <ul style="list-style-type: none"> Helps all RUs and customers know all details about network and services; Useful for commercial services. | <ul style="list-style-type: none"> difficulties related to the gathering information process: for instance, IMs do not have always this information available since do not always manage directly facilities. |
| M 12 – Licensing body to publish list of requirements (...) to process application and schedules fees | Very Important | <ul style="list-style-type: none"> Very supportive to enhance rights; Licensing processes have to be eased in all MSs; Helps all RUs and customers know all details about network and services; Enhanced transparency. | <ul style="list-style-type: none"> no major comments. |
| M 13 – Extend monitoring of rail market to infrastructure investment, development of price and quality (...). | Very Important | <ul style="list-style-type: none"> RMMS is a very good tool to assess the state of development of the market. It will certainly serve as a good political tool for the EC when requiring MS to comply with financial provisions in the Directives; This measure help identifying bottlenecks of the service market, this reason being important to the definition of viable alternative; This measure could be pre-requisite to establish common performance criteria for the whole railway network and railway undertakings. | <ul style="list-style-type: none"> Sensitive commercial information of the RU's has not to be transmitted and published in a liberalized market |
| M 14 - Accounting separation (Eurotunnel) | Very Important | <ul style="list-style-type: none"> Very important: the Directives should apply to all railway infrastructure companies. Hence, the special situation of Eurotunnel compared to other infrastructure companies should indeed be assessed | <ul style="list-style-type: none"> No major comments |
| M 15 - Accounting separation for “monopoly” activities | Very Important | <ul style="list-style-type: none"> No major comments | <ul style="list-style-type: none"> No major comments |

Source: Questionnaires, workshop and call follow-up (2008)

The following table presents the final evaluation of Measures within Objective 3, considering the questionnaire results, the outcome from the workshop and the further comments gathered through telephone calls.

Table 1-6: Ranking and Comments on Measures gathered

| Measures | Ranking | Pros | Cons |
|----------|---------|------|------|
|----------|---------|------|------|

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| Measures | Ranking | Pros | Cons |
|---|----------------|--|---|
| M 17 - RB to cooperate and empower them to take joint decision (...) | Very Important | <ul style="list-style-type: none"> Both very important: the national RBs shall exchange information about their work and decision-making principles and practice for the purpose of coordinating their decision-making principles across the Community. In this respect, the national RBs shall take into consideration the necessity of int'l cooperation foreseen in a. 15 and of the possible impact of their decisions on the procedures or practices stated at European level. The Commission shall support them in this task. | <ul style="list-style-type: none"> It could be too early to force RBs to take joint decision, since in some Mss RBs are not yet established. |
| M 18: RB to exchange information ahead of national decision (...) | Very Important | | <ul style="list-style-type: none"> Critical overlap with commercially sensitive information |

Source: Questionnaires, workshop and call follow-up (2008)

The following table presents the final evaluation of Measures within Objective 4, considering the questionnaire results, the outcome from the workshop and the further comments gathered through telephone calls.

Table 1-7: Ranking and Comments on Measures gathered

| Measures | Ranking | Pros | Cons |
|---|----------------|---|---|
| M 19 - Differentiated Track Access Charges | Less Important | <ul style="list-style-type: none"> Chance to finance low noise emission programme. | <ul style="list-style-type: none"> Costs to the industry (administration, retrofitting) not to be equally distributed ; Risks of discriminations between operators or cars owners ; Any noise-related access charges on top of the totally non-transparent charges are to be avoided. They do not support to make rail freight more competitive in intermodal terms. Current EU legislation is sufficient |
| M 20 – Publication of medium-long term strategy | Very Important | <ul style="list-style-type: none"> Potentially able to increase rail's market share; With no strategy for use of network and required level of performance, cost optimisation cannot be reached; The rail industry relies on long lifecycle investments. Long term commitment is necessary for attracting new actors on the market and for developing new services; A medium/long term plan is very important for RUs and IMs so that they can plan their activities in future. | <ul style="list-style-type: none"> The RB should not be empowered to assess the appropriateness of development plans. This is not related to the RB's task to promote competition on the railway network. |
| M 22 – Performance Regime | Important | <ul style="list-style-type: none"> The most effective method of reducing delay. | <ul style="list-style-type: none"> Difficult harmonisation; The legislation should not interfere with commercial responsibilities of RUs and IMs; |
| M 23 – Harmonised track access charging scheme | Very Important | <ul style="list-style-type: none"> Track access charges are cost based – if a segment is to be priorities, there are possibilities to give discounts | <ul style="list-style-type: none"> Hard core legislations would not work throughout various considerations of MSs (different level of development, elements of access charge and State's funds) The measure should be adopted through a flexible tool that needs to be adapted regularly to the specific needs. |
| M 24 – RU to not collect rail infrastructure charges | Very Important | <ul style="list-style-type: none"> No major comments. | <ul style="list-style-type: none"> Already in place in many MS. No new legislation or soft law necessary; Not focused on equal and transparent access to information on charges. |

Source: Questionnaires, workshop and call follow-up (2008)

The following table presents the final evaluation of Measures within Objective 5, considering the questionnaire results, the outcome from the workshop and the further comments gathered through telephone calls.

Table 1-8: Ranking and Comments on Measures gathered

| Measures | Ranking | Pros | Cons |
|---|----------------|---|--|
| M 25 – RB to cover decision under Annex II of D 2001/14 | Very Important | <ul style="list-style-type: none"> The measure should help clarifying the competences of RBs avoiding overlapping of competences with Competition Authorities. | <ul style="list-style-type: none"> No main comments. |
| M26 – RB functionally independent | Very Important | <ul style="list-style-type: none"> No main comments. | <ul style="list-style-type: none"> In some Countries RBs are not yet in place; No need for further regulation at this stage. |
| M 27 – RB – require cost accounting data in aggregated and standardised form (...) | Very Important | <ul style="list-style-type: none"> The Regulator should be in a position to require that track access costs are as low as could reasonably be delivered by a competent and efficient IM. | <ul style="list-style-type: none"> Not easily achievable and eventually; generating different administrative costs This does not fit within the set of roles attributed to the RB. |

Source: Questionnaires, workshop and call follow-up (2008)

The following table presents the final evaluation of Measures within Objective 6, considering the questionnaire results, the outcome from the workshop and the further comments gathered through telephone calls.

Table 1-9: Ranking and Comments on Measures gathered

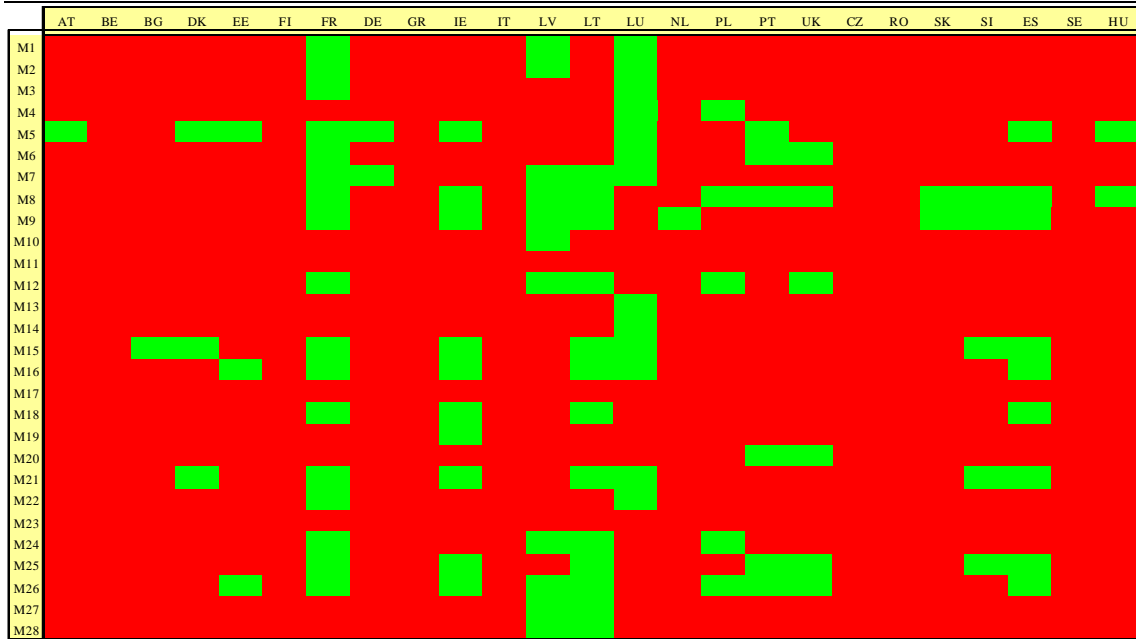
| Measures | Ranking | Pros | Cons |
|---|---------|---|--|
| M 28 - Community liability rules (CUI) | | <ul style="list-style-type: none"> Clear rules dealing with responsibility issues between IMs and RUs are essential (e.g. EGTC). For this purpose, either CUI rules could be formally acknowledged, or new responsibility rules could be developed at EU level since national rules are not always exhaustive; Crucial to have clear and balanced liability rules between IMs and RUs. Resolving the COTIF CUI problem would be the only way forward. | <ul style="list-style-type: none"> Liability rules already exist within the COTIF CUI appendix. There would be no need to redraft such rules at EU level on condition the EU puts and end to its request for reservations to the CUI. If the CUI applies, sufficient legal certainty will exist on the market with some minor adaptations of the CUI (extension of its scope to national traffic and to delays as foreseen in the Passenger Rights Regulation). |

Source: Questionnaires, workshop and call follow-up (2008)

As regards measures already in place, dividing Measures by Objective the data gathered from the stakeholders show that in absolute terms, a 26% of measures are already in place in 1 Member State out of 4 (or in 25% of EU Countries).

Figure 1-3: Measures already in place across Member States of EU 27 consulted

Stakeholders Consultation – Overview



■ Already in place
 ■ Not already in place

Source: Questionnaires, workshop and call follow-up (2008)