Creeping towards a **messy compromise?**

Although there may be few outward signs of progress with the European Commission's Fourth Railway Package, heated debate is continuing behind the scenes, and the legislation looks set to be adopted later this year. Chris Jackson reports from Brussels.

Europe needs its railways. Today there is a widespread consensus that transport is a facilitator of economic activity, and that good transport is essential for economic success, even if the provision of transport alone is not sufficient to guarantee prosperity.

Most players also agree that rail should be playing a bigger role in the transport mix than it does today. The European Commission's 2011 White Paper *Roadmap to a Single European Transport Area* envisaged that by 2050 rail and inland waterways should be carrying around 50% of all freight traffic moving more than 300 km, and rail should also take a bigger share of long-distance passenger traffic. As well as relieving road congestion, this would contribute to a significant reduction in the carbon footprint of transport, which is essential if Europe is to meet its targets for combatting climate change (p34).

Yet there is a very real sense of frustration in Brussels. Almost two years after the Commission published its Fourth Railway Package (RG 3.13 p30), the legislation is still not in force and the debate on the various proposals is far from over. Speaking at the European Rail Freight Days conference on November 27, Transport Commissioner Violeta Bulc admitted that she did not expect the negotiations on the package to be adopted before the middle of 2015 — although she insisted that there were many steps that operators and infrastructure managers could take to improve their services without waiting for the legislation.

As we have reported before, the proposals in the technical pillar (p28) enjoy fairly wide support. These had been debated by both the European Council of transport ministers and the European Parliament under the Greek Presidency in the first half of 2014, but there was then a hiatus during the elections to the European Parliament last May, followed by the selection of the new Commission which took office at the beginning of November.

Although the Parliament also voted on the market pillar, adopting some significant amendments in February, it was not until the Transport Council meeting on October 8 that the ministers were able to start addressing these proposals. Italy's Minister of Infrastructure & Transport Maurizio Lupi insisted that the Italian Presidency was committed to reaching a 'general approach' at the following meeting on December 3, but a number of member states are still questioning the Commission's premise that competition is the best way forward.

On December 3, the Transport Council 'broadly welcomed' a progress report by the Italian Presidency. It adopted a general approach to the repeal of Regulation 1192/69, allowing the simplification of railway accounting, but made little substantive progress on the remaining market liberalisation measures.

Debating policy. DG Move Director-General João Aguiar Machado explains the Commission's policy to the European Rail Summit, joined by CER Chairman Christian Kern, Ismail Ertug MEP, RG Editor-in-Chief Chris Jackson and DB Head of Regulatory Affairs Frank Miram.

Split or no split?

Several member state governments made it clear at both Council meetings that their priority was to push ahead with the technical pillar, which would improve the processes for safety certification and authorisation of both operators and new rolling stock. These reforms are seen as urgent by operators and suppliers, with many industry bodies calling for them to be adopted as soon as possible.

Speaking at the inaugural European Rail Summit hosted by *Railway Gazette* at the Bavarian Representation in Brussels on November 4-5, DG Move Director-General João Aguiar Machado insisted that 'it is not the Commission which is delaying progress'. He reported that the trialogue process for consolidating the Commission's proposals with the amendments adopted by the European Parliament and the Council was getting underway. Machado told the delegates that he 'did not believe that the package should be split', but he agreed that the technical pillar 'should not be held hostage' if the other proposals do not make progress. The Commission and the Italian Presidency reiterated at the Transport Council meeting in December that 'the technical pillar on its own is not enough, and the package should stay together'.

Suggesting that the latest progress report 'provides a solid basis for further discussions', the Community of European Railways said it was looking forward to the Latvian Presidency (which starts this month) 'giving priority to the technical pillar, as the instrument that will enable significant cost reduction in railway technologies'.

Latvia's Deputy Secretary for Transport Dins Merirands told the Summit that the Presidency would do its best to push the package forward, while Dr Alessandro Violi from the Italian ministry said he felt there should then be a pause in the European legislative process, leaving time for the railway sector to 'adjust to life' in the new regime as the various provisions come into force over the next few years.

Under the technical pillar proposals, the European Railway Agency would become a 'one-stop shop' for safety certification and authorisation of operators and new rolling stock across Europe, working closely with the national safety authorities. With several member states lobbying to retain a greater role for their NSAs, the remaining questions on the technical pillar are mainly about the speed of implementation, the length of any transition period, and the resources needed for ERA to fulfil its expanded remit.

Speaking shortly before his mandate ended, outgoing Executive Director Marcel Verslype told the delegates that although the package would significantly expand ERA's role, he was having to reduce staffing in line with EU budget cuts.

Verslype also emphasised the need to ensure that the measures in the Second Railway Package had been fully implemented before moving on to the Fourth. ERA insiders suggested that the text of the technical pillar needed further work, warning that the proposals as currently worded risked undoing some of the work that the agency has been doing in recent years to co-ordinate the different national rolling stock authorisation regimes.

Liberalisation welcomed

Most railways — if not their governments — now accept that further liberalisation of the domestic passenger market is not just inevitable but potentially beneficial.

The Third Railway Package required that all services operated under some form of public service obligation with state funding are put onto a contractual basis, and the Fourth would require these contracts to be competitively tendered. Proponents of reform point to experience in the UK and Sweden, where passenger traffic has increased sharply since those markets were restructured.

The case for liberalisation was put to the Summit by the Chairman of the European Passenger Transport Operators' association, Piers Marlow, who is Business Development Director of the DB-owned Arriva group, which holds operating contracts and franchises in various countries. Responding to his comments, SNCF's Jean-Michel Dancoisne said the proposals for the tendering of regional services would enable the rail sector to face the challenge of inter-modal competition. 'Open the market to open the mind', he suggested. As President Guillaume Pepy recently pointed out (RG 11.14 p25), SNCF has considerable experience in bidding for operating contracts and franchises through its majority ownership of Keolis, and it also holds stakes in open access inter-city operators such as Westbahn in Austria and NTV in Italy.

While the Fourth Railway Package would allow 'commercial' domestic passenger services to be operated under open access rights from 2019, some governments remain concerned that the introduction of domestic competition could see such operators cherry-picking the more profitable routes and thus increasing the subsidy needed to support the rest of their networks.

UK Rail Executive Director General Clare Moriarty and SNCF's Jean-Michel Dancoisne debate the case for further passenger liberalisation.

However, having experienced two years of competition from NTV on its core high speed routes and participated in the contracting of regional services in Italy, FS Group CEO Michele Elia told the Summit that 'from our experience, liberalisation is a very good thing'. He reported that the Italian government was looking at the privatisation of some parts of FS during 2015 (RG 12.14 p7).

According to CER, most member states now support the market-opening proposals, although it believes that further discussions are needed over the mechanism for awarding public service

VISION

A competitive network

If the 2011 White Paper's ambitious objectives for modal shift and a greater market share are to be achieved, Europe clearly needs to have a rail sector that is prosperous, competitive, and highly customer-focused.

Over the past 20 years there has been a continuous programme of European legislation aimed at making rail more competitive, more efficient, and more international. As DG Move's Director-General João Aguiro Machado explains on p31, liberalisation and competition are seen as the best way to encourage greater efficiency and customer focus. This has been coupled with demands for vertical separation between train operations and infrastructure management in order to ensure financial transparency and non-discriminatory access to the various state-owned networks.

At the same time, the EU is working to forge a disparate collection of largely self-contained national railways into a truly comprehensive network, the so-called Single European Railway Area. That poses many technical challenges, but it also presents an operational conundrum.

For the past century and a half, most of Europe's rail traffic has moved within national boundaries and this remains the case in the passenger sector, where the dominant commuter operations account for the largest proportion of passenger journeys. But the Single Market and globalisation of trade have radically altered the freight business. More and more goods are moving further and crossing more borders en route from producer to consumer, and Europe's railways need to compete in this changing market.

Thus the Commission set out to grow the role of rail for international freight transport, starting with Directive 91/440. Subsequent legislation including the so-called First Railway Package in 2001 was also aimed mainly at rail freight, which was fully liberalised through the Second Railway Package of 2004, along with measures to ensure interoperability and safety in a more fragmented market. The Third Railway Package of 2007 brought the liberalisation of international passenger services with effect from January 1 2010. However, the Chairman of the EPP group in the European Parliament, Manfred Weber MEP, pointed out at the European Rail Summit that some member states have still not implemented all of these measures.

Some states remain concerned that the focus on international traffic should not be at the detriment of existing services which support their domestic economies. In the passenger sector, a lack of reciprocity over domestic liberalisation means that some markets have been fully liberalised, while others remain protected. Some state-owned railways have been broken up into smaller customer-focused businesses, while others enjoy continuing support as national champions, benefiting from the scale and reach to expand into new markets.

Even after two decades, it is still far from clear what the 'best' structure is for a truly competitive railway business. Smaller organisations are generally more responsive to their stakeholders, while large ones have a broader reach, and have access to greater resources to withstand the buffeting of any downturns in the economic cycle. While there is clearly a case to be made for both large and small operators, it seems difficult for them to coexist where the market is unequal. ■

EUROPE Rail Summit

The technical pillar. Infrabel CEO Luc Lallemand, CER Director Libor Lochman, ERA Executive Director Marcel Verslype, UNIFE Director General Philippe Citroën and Siemens Mobility CEO Jochen Eickholt reflect on progress with simplifying the vehicle acceptance regime.

contracts. CER says it still has concerns over the proposed definition of Public Transport Plans, and the mechanisms by which local competent authorities have to guarantee fair access to rolling stock.

Presenting the view of an authorising authority, Bayrische Eisenbahngesellschaft CEO Johann Niggl said 'I don't see any alternative to deliver efficiency except competition.' However, he pointed out that the substantial cost savings that had been achieved from tendering many German regional services could only be harnessed once, and future competitions would only offer incremental improvements.

Vertical separation

Perhaps the most controversial elements in the Fourth Railway Package are the measures intended to ensure greater transparency between incumbent operators and infrastructure managers, even though the Commission had already backed away from compulsory vertical separation and the break-up of state-owned holding groups.

Pro-competition advocates are particularly concerned that some of the amendments adopted by the European Parliament in February 2014 would effectively wreck the spirit of the market proposals, and potentially turn the clock back by undoing some of the liberalisation provisions in the earlier legislation.

Some member states are reportedly calling for the different governance models adopted in the various countries to be put on an equal footing, which would effectively enshrine the status quo. Meanwhile, the debate continues over the Commission's proposals for defining the 'essential functions of the infrastructure manager', which need to be exercised independently from the operators in order to manage the network in an effective and non-discriminatory way.

While the separation of infrastructure managers from train operators has allowed each to focus on its core activities, all parties needed to work closely together to make best use of capacity. Reflecting on the significant growth of rail traffic in the UK over the 20 years since privatisation, Clare Moriarty, Director General of the Department of Transport's Rail Executive, explained that the industry was now trialling different models of 'alliancing' between Network Rail's regional Routes and the franchised train operators, emphasising that there was no 'one size fits all'.

Given the nature of railway technology, there needs to be close co-ordination across the wheel-rail interface, as engineers have been pointing out since the first steps towards vertical separation in the 1980s. Alliancing enables a degree of unified management of the railway 'as a system', offering benefits in terms of performance as well as investment planning. The so-called 'deep alliance' model in particular makes the infrastructure manager more aware of the commercial impact of its policies on the end-users — both passenger and freight — to whom they might not otherwise be accountable. But Moriarty admitted that the operational efficiencies had not yet been reflected in the amount of state funding being put into the rail sector.

However, not everyone is convinced about the idea of alliancing, notably the European Rail Freight Association which now also represents a number of open access passenger operators as well as its members in the freight sector.

Secretary-General Julia Lamb pointed out at the Summit that many smaller operators were still facing a variety of discrimination problems because of a lack of transparency between major operators and infrastructure managers within the state-owned holding groups. ERFA fears that alliancing may simply provide another mechanism for large incumbents to continue circumventing the requirements for non-discriminatory treatment.

Time to push ahead

At the end of November, representatives from several pro-liberalisation groups including ERFA, the European Passengers' Federation, the European Shippers' Council, intermodal operators' association UIRR, freight forwarders' association Clecat and the German independent operators' association Mofair sent an open letter to the Council calling for rapid adoption of the market pillar.

Insisting that the Fourth Railway Package provides 'an opportunity to establish the right framework conditions for competition and entrepreneurialism which is essential for the efficient provision of goods and services', the groups pointed out that rail services in parts of Europe were continuing to stagnate and decline. Suggesting that 'new entrants must be enabled and encouraged if they are to bring benefit for the sector', the letter points out that greater reform would encourage much-needed private investment in the rail sector at a time when public finances are under pressure, 'keeping costs and charges to the taxpayer as low as possible'. ■

PROPOSALS

Fourth Railway Package

Proposed by the Commission in January 2013 and currently being debated, the Fourth Railway Package is aimed at 'completing the Single European Railway Area to foster European competitiveness and growth'.

This includes the opening up of domestic passenger services to competition in all member states by December 2019, including the tendering of services provided under a Passenger Service Obligation contract. To this end, the Commission envisages expanding the rights of railway undertakings to access infrastructure and facilities, and requiring greater transparency in the governance and funding of rail infrastructure managers.

The technical pillar envisages an expanded role for the European Railway Agency. This would become a one-stop shop issuing safety certification of railway companies and authorisation for vehicles to be placed on the market. ERA would also monitor the work of the National Safety Authorities and supervise the application of national rules.

The package comprises six pieces of legislation, broadly grouped into three technical and three market-oriented measures:

- **Proposed Directive** on railway safety
- **Proposed Directive** on the interoperability of the rail system within the European Union
- **Proposed Regulation** on the European Union Agency for Railways, repealing Regulation 881/2004
- **Proposed Regulation** amending Regulation 1370/2007, concerning the opening of the market for domestic passenger transport services by rail
- **Proposed Directive** amending Directive 2012/34, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure
- **Proposed Regulation** repealing Regulation 1192/69 on common rules for the normalisation of the accounts of railway undertakings

Bayrische Eisenbahngesellschaft CEO Johann Niggl explains how the authority has harnessed the benefits of contracting out rail services through competitive tenders.

A recorded version of the European Rail Summit proceedings and supporting presentations can be found at **live.wavecast.co/european-rail-summit**