

**EUROPEAN ECONOMIC AREA  
STANDING COMMITTEE  
OF THE EFTA STATES**

**Brussels, 2 December 2004**

**Ref. No.: 1047537**

**SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND  
SERVICES**

**EEA EFTA COMMENTS ON THE COMMISSION'S PROPOSAL  
CONCERNING FURTHER INTEGRATION OF THE EUROPEAN RAIL  
SYSTEM:**

**THIRD RAILWAY PACKAGE**

**EXECUTIVE SUMMARY**

The EEA EFTA States welcome the proposal amending Council Directive 91/440/EEC on the development of the Community's railways (COM (2004) 139).

They also support the proposal for a Directive on the certification of train crews operating locomotives and trains on the Community's rail network (COM(2004) 142 final). They suggest that the Directive use definitions commonly used in other legislation in the same field. For safety reasons, the EEA EFTA States propose that the minimal age for obtaining the licence and the harmonised complementary certificate should be at least 21 years and language skills should be confirmed by language tests.

However, the EEA EFTA States fail to see the need for the introduction of a Regulation on compensation in cases of non-compliance with contractual quality requirements for rail freight services (COM(2004) 144 final).

Although the EEA EFTA States generally support the introduction of a Regulation on international rail passengers' rights and obligations (COM(2004) 143 final), the scope should be limited to solely regulating the relationship between passengers and railway undertakings. The proposal should be streamlined with the general rules laid down by COTIF.

## I INTRODUCTION

1. The EEA EFTA States strongly support the Commission's initiatives for creating a European railway market. They consider that the railway packages I and II have been of great importance in attaining this goal, and that the third package takes a further step in this direction.
2. With the aim of reaching the objectives of the third railway package efficiently, the EEA EFTA States take the opportunity to indicate certain amendments to the proposal.

## II AMENDMENTS PROPOSED BY THE EEA EFTA STATES

### *A. Proposal for a Directive amending Council Directive 91/440/EEC on the development of the Community's railways (COM(2004) 139 final)*

3. The EEA EFTA States support further liberalisation in the railway sector in general and believe that competition is the correct way to revitalise the railway sector, including passenger transport. A gradual opening of passenger services for competition, including cabotage, could provide a good basis for an increase in rail passenger services. However, it will be necessary to follow the development carefully, and use the possibility to make exemptions according to the directive, if the result is increased public expenditures.

### *B. Proposal for a Directive on the certification of train crews operating locomotives and trains on the Community's rail network (COM(2004) 142 final)*

#### **1. In General**

4. The EEA EFTA States support the proposal. In an integrated railway market, unnecessary stops at borders must be avoided. However, the EEA EFTA States would like to emphasise the importance of harmonising the requirements in the interoperability directives, including the technical specifications specifying these directives, and the directive on certification of train crews.

#### **2. The proposal should use already introduced definitions common to other legislation (Article 2 (c) of the proposed Directive)**

5. The EEA EFTA States propose to replace the wording "train crew" with "on-board staff".

6. Bearing in mind that the definition “on-board staff” is used in Commission Decision 2002/734/EC of 30 May 2002 concerning the technical specification for interoperability relating to the operation subsystem of the trans-European high-speed rail system referred to in Article 6(1) of Council Directive 96/48/EC, the EEA EFTA States consider this definition to be more adequate than “train crew”.

**3. The required age limit shall be fixed at 21** (Article 8 (c) of the proposed Directive)

7. The EEA EFTA States propose to replace the first sentence with:

*“Applicants shall be at least 21 years of age.”...*

8. Concerning the proposed minimum of 20 years of age in Article 8, the experience of the EEA EFTA States is that the necessity of maturity in this kind of work indicates a minimum age of 21. The EEA EFTA States therefore propose an increase of the minimum age to 21.

**4. Language skills need to be confirmed by language tests** (Annex III, point 5 to the proposed Directive)

9. The EEA EFTA States propose to change the proposed text of Annex III point 5, first paragraph and amend it as follows:

*“Staff responsible for controlling rail traffic must have sufficient knowledge, confirmed by language tests, to use the messages and communication method described in the “Operations” TSI.*

10. The EEA EFTA States consider the lack of language skills and misunderstanding in communication as an important source of risk for international rail traffic safety. They therefore emphasise the importance of language tests also for staff responsible for controlling rail traffic in order to maintain a high level of safety in international rail traffic.

**C. Proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services (COM(2004) 144 final)**

**The introduction of this regulation is felt to be unnecessary as it regulates the content of a contractual relationship between professional parties.**

11. The EEA EFTA States have difficulties seeing the necessity of this regulation, which aims to regulate the content in a contract between two professional parties in the railway market. It is the general opinion of the EEA EFTA States that the authorities should be cautious about such regulation. It could increase costs for the railway services

and prompt customers to transfer to other transport modes. The EEA EFTA States believe in the capacity of the professional stakeholders to, on their own, establish minimum requirements for the quality of service by common agreement.

12. If ever, such a regulation should be limited to minimum *contractual* quality requirements as set out in Articles 3-5 of the regulation in combination with a ban on contractual limitation or exclusion of liability by the service provider. Such provisions should preferably be implemented in line with the existing frameworks on European/international contract law.

**D. Proposal for a Regulation of the European Parliament and of the Council on international rail passengers' rights and obligations ((COM(2004) 143 final)**

**1. The proposed regulation is in its present form too detailed and therefore lacks clarity. The link between the proposed regulation and the rules laid down by COTIF must be clarified**

12. The EEA EFTA States are in favour of a common regulation concerning passengers' rights such as strengthening liability in case of body injury or death, right to information about delays, etc, and the possibility to make appeals and complaints.

13. However, the EEA EFTA States feel the proposal is too detailed and therefore lacks clarity as it wants to regulate too many different aspects of international rail transport.

14. In order to achieve fair competition between the different transport modes, it is of great importance that the requirements concerning passengers' rights be comparable.

15. Furthermore, the proposed regulation does not clearly refer to the rules laid down in COTIF, the Convention on International Carriage by Rail, especially the Uniform Rules on Contract of International Carriage of Passengers by Rail (CIV – Appendix A to the Convention). The connection between COTIF and the proposed regulation seems to be unclear and has to be clarified.

**2. The scope of the regulation should be limited to regulating the relationship between passengers and railway undertakings only (Article 1, point 3 of the proposal)**

16. The EEA EFTA States propose that the last paragraph of Article 1 be deleted.

17. The EEA EFTA are of the opinion that the scope of the regulation goes far beyond the relationship between passengers and railway undertakings. The EEA EFTA States therefore consider it necessary to streamline the proposal and concentrate the regulation strictly on the relationship between passengers and railway undertakings.

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