

## **TRANSPORT Council** **8 October 2015 in Luxembourg**

Starting at 9.00, the Council will aim for a general approach on two proposals to **liberalise rail passenger services** and **strengthen the governance of railway infrastructure**. They are part of the "political" or "market" pillar of the fourth railway package.

The Council will hold a policy debate on EU transport policy priorities and targets in the context of the **2011 Transport White Paper**.

Ministers will address the issue of **railway security** over their working lunch.

Commission Vice-President Jyrki Katainen and European Investment Bank Vice-President Pim van Ballekom will brief ministers on new opportunities linked to the **European fund for strategic investments (EFSI) and the EU financing landscape for transport**.

Under any other business, the Commission will update ministers on ongoing work to develop new **test procedures to measure real driving emissions from cars**. The presidency will inform ministers on the outcome of the informal Transport Council meeting dedicated to **cycling**.

The presidency will suggest at the beginning of the meeting that all the items be discussed in public session.

Press conference: at the end of the meeting (+/-16.30).

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*Press conferences and public events by video streaming: <http://video.consilium.europa.eu>*

*Video coverage in broadcast quality (MPEG4) and photo gallery on: [www.eucouncil.tv](http://www.eucouncil.tv)*

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<sup>1</sup> This note has been drawn up under the responsibility of the Press Office.

## Railway market opening and governance

The Council will seek a **general approach** on **governance and market opening** proposals under the fourth railway package. The draft directive and regulation are intended to make railway services more dynamic and customer-oriented. They also aim to encourage investment and innovation and ensure fair competition in the rail market.

### Commission proposals on market opening and governance

After the liberalisation of rail freight services in 2007 and international passenger transport in 2010, the Commission has proposed that domestic rail passenger services be opened up to competition from December 2019. From then on, EU railway undertakings would have **equal access** in all EU countries to tracks, signals and stations for the purpose of running domestic passenger services.

Companies would be able to offer their rail services either by **setting up their own commercial services** to compete with other operators, or by **bidding for public service contracts**, which currently account for over 90% of EU rail journeys.

Public service contracts are agreements that aim to fulfil a **public service obligation (PSO)**. Their purpose is to ensure the availability of public transport services where these are socially desirable even when they would not be profitable in a free market. Typically, running such services requires subsidies from public authorities.

Under current EU law, member states' authorities have the choice to either award public service contracts directly or organise competitive tendering procedures. The Commission has proposed that, from 2019, public service contracts would, as a general rule, be subject to mandatory tendering. Existing, directly awarded contracts would be allowed to run until their expiry date but not after the end of 2022.

The Commission has also suggested strengthening EU rules on the **separation between infrastructure managers**, which run the network and stations, **and railway undertakings**, which operate the services. The aim is to ensure that operators have equal access to tracks.

### Presidency compromise proposals

#### - Public service obligation (PSO) regulation

Under the compromise proposal put forward by the presidency, **competitive tendering** would indeed be the **main rule for awarding public service contracts**. However, wider exemptions to this rule have been introduced, allowing public service contracts to be awarded directly. The exemptions take into account members states' concerns, such as the suitability of competitive tendering for small markets and the need to ensure the long-term continuity of public rail transport services.

The presidency compromise proposes **exemptions related to small contracts, performance improvement or temporary exceptional circumstances**.

In particular, member states' authorities would be able to opt for direct award where they consider that, firstly, this is **justified by relevant structural and geographical characteristics of the market and network** and, secondly, that a directly awarded contract would **improve the quality of services and/or cost-efficiency** compared to the previous contract. The characteristics that may be taken into account to justify direct award include size, demand, network complexity and its geographical and technical isolation (e.g. different gauge) and services covered by the contract.

If a member state's authority chooses to award the contract directly, it must substantiate its decision and inform the Commission about it.

A special provision has been added to clarify that countries with **very small rail markets** can award contracts directly if they commit to improving public rail services.

The national authority must define **performance requirements** to be included in the contract. Such requirements will cover for example the punctuality and frequency of trains. The authority will periodically assess the rail operator's success in achieving the targets and take measures if needed.

The authority may also award a contract directly as an emergency measure for instance if the service would otherwise be disrupted.

The presidency compromise includes **longer deadlines** than those put forward by the Commission. For example, national authorities would be able to continue to award public service contracts directly for 10 years after the regulation enters into force without having to justify their use. Directly awarded public service contracts that exist when the regulation enters into force would be allowed to run until they expire.

#### **- Governance directive**

The Council considers that many organisational arrangements that currently exist in member states are compatible with the main objectives of the proposal and should not be required to be changed unduly. The presidency has therefore identified a number of situations that need to be addressed, such as risks of conflicts of interests or transfers of funds between infrastructure managers and railway companies. The provisions proposed by the Commission have been adapted, to focus on specific measures to prevent such situations. The aim is to have **efficient safeguards without unnecessary interference with the structure of undertakings**.

While the Commission proposed that all the functions of infrastructure managers be subject to a single set of stringent independence requirements, the presidency compromise makes a distinction between essential and non-essential functions. Essential functions cover decision-making on train path allocation and infrastructure charging. To avoid any unnecessary administrative burden and adaptation costs, **measures to ensure independence should centre on essential functions**.

A certain flexibility has been introduced in the **way in which the infrastructure manager's functions can be carried out**. Member states may decide to allow path allocation and infrastructure charging to be carried out by an independent body. In addition, the infrastructure manager may outsource functions or tasks under certain conditions.

**Loans between different players in the railway sector** would not be prohibited as a general rule, but only in cases where they present a risk to the fair operation of the sector. For example, loans between different entities of a vertically integrated undertaking (such as a holding company) would be allowed subject to conditions. The infrastructure manager's debts are to be separated from other legal entities' debts in a vertically integrated undertaking, but the final payment may be made by such another entity.

Rules to ensure the **independence of staff and management** have been simplified to avoid overregulation.

Member states would have three years to adapt their national provisions. Some key rules, such as those relating to infrastructure managers' independence or financial transparency, would have to be in place by the end of this transition period. Others, including non-discriminatory access to infrastructure, would apply from 2020.

## - Outstanding issues

Two elements remain to be confirmed by ministers. The first one is a proposal to ensure legal certainty by expressing clearly that a railway undertaking's right to access infrastructure does not affect the competent authority's right to award a contract directly. The second one aims to address situations in which a member state usually awards contracts through competitive tendering but would like to have the possibility to award public service contracts directly in exceptional circumstances such as a market failure.

[PSO and governance: draft general approach](#)

## Fourth railway package - background

The fourth railway package, presented by the Commission in January 2013, aims to remove the remaining barriers to the completion of a Single European Railway Area. The goal is to increase the share of rail transport in relation to other, more carbon-intensive, transport modes, and to foster competitiveness and growth.

The package also includes a technical pillar, which consists of proposals on the safety and interoperability of European railways and on the European Railway Agency. Agreement on the technical pillar was reached with the European Parliament in June 2015. These texts are currently undergoing legal-linguistic revision.

[Fourth railway package](#)

## Transport White Paper

The Council will hold a **policy debate** on EU transport policy priorities and targets in the context of the **2011 Transport White Paper**.

The White Paper aims to build a competitive transport system, while significantly reducing Europe's dependence on oil and cutting greenhouse gas emissions in transport by 60% by 2050, compared to the 1990 levels. To achieve this, it lists 40 initiatives, ranging from creating a true internal market for rail services to introducing smart pricing and taxation. It also sets ten goals to be used as benchmarks for reaching the emissions reduction target. These goals include having no more conventionally-fuelled cars in cities and shifting 50% of medium distance intercity passengers and freight journeys from road to rail and waterborne transport by 2050.

The Commission is currently looking at the state of play in the implementation of the White Paper. As input to this stock-taking, the presidency is now seeking member states' views on transport policy in light of developments in the sector in the last few years. Ministers are invited to consider which initiatives are the most urgent to be put into practice over the next ten years. Issues raised by the presidency include reducing the demand for the transport of passengers (for example by boosting working from home), internalisation of external costs, walking and cycling as part of transport policy and the need for EU targets for the reduction of the number of seriously injured in road traffic. Ministers are also asked to state whether they find the targets and goals set out in the White Paper realistic.

The Commission is invited to take note of conclusions from the discussion in its stock-taking report to be presented in December 2015.

[Transport White Paper policy debate](#) - presidency document, including questions for ministers

[European Parliament resolution on the implementation of the White Paper](#), September 2015

[Council debate on the White Paper in June 2011](#) - presidency's synthesis

[Transport White Paper 2011](#)

## European fund for strategic investments and EU financing for transport

Commission Vice-President Jyrki Katainen and European Investment Bank Vice-President Pim van Ballekom will brief ministers on new opportunities linked to the **European fund for strategic investments (EFSI) and EU-level financing available for transport.**

Maintaining, developing and greening the EU transport system requires considerable efforts at all levels - EU, national, regional and local - both in terms of policy development and financing.

There are currently a wide range of EU-level funding options available for transport infrastructure to complement support by member states. These include the Connecting Europe Facility (CEF), the European Structural and Investment Funds (ESI Funds) as well as the European Fund for Strategic Investment. However, meeting the significant infrastructure needs in the coming years remains a major challenge for the sector and cannot be achieved without private investment. The Investment Plan for Europe aims to scale up private funding and leverage public spending. In particular, it seeks to create synergies by combining EU-level funding with new, innovative instruments.

The presentation is expected to set out how the transport sector can make the most of the Investment Plan. This includes "blending" resources from the CEF, ESI Funds and EFSI. Technical assistance will be available for member states to support project preparation and implementation.

[European fund for strategic investments \(EFSI\)](#)

[Connecting Europe Facility](#)

### Any other business

- Real driving emissions test procedures for passenger cars and light duty vehicles  
*Information from the Commission*
  - Statement by Luxembourg promoting cycling as a mode of transport  
*Information from the presidency*
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