

22 May 2000

**COMMON POSITION ADOPTED BY THE COUNCIL CONCERNING THE  
"RAILWAY INFRASTRUCTURE PACKAGE"**

**UNICE COMMENTS**

***INTRODUCTION***

On March 20, the Council published Common Positions with a view to the adoption of Directives of the European Parliament and of the Council:

- amending Council Directive 91/440 on the development of the Community's railways
- amending Council Directive 95/18 on the licensing of railway undertakings
- on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification

UNICE stresses the importance of these three draft directives as a first step towards full liberalisation of rail transport within the Community. In addition to these three directives UNICE emphasises the need for a technical harmonisation and training of personnel in order to create interoperability.

*The following comments aim at ensuring that rail transport can play an essential and significant part in the logistical concepts of companies and will contribute to the competitiveness of European industry.*

***GENERAL COMMENTS ON THE COUNCIL'S COMMON POSITIONS***

Although UNICE has a positive view on the potential of rail transport, it considers that the liberalisation process is moving much too slowly. UNICE is convinced that the liberalisation of rail transport can break the vicious circle of high costs, low quality, falling market share, continuing financial losses, postponement of necessary investments and the threat of job losses. The concrete measures to be taken are already known; implementing these measures simply requires carrying out the policy line of the EU throughout Europe. In order to advance the liberalisation process, UNICE would give priority to three measures:

- 1. Separation between infrastructure management and transport services**
- 2. Full access for all EU-licensed undertakings to the rail networks in all Member States**
- 3. Open access for authorised applicants**

Additional UNICE recommendations on the Railway Infrastructure Package are attached.

## ***SPECIFIC COMMENTS ON THE COUNCIL'S COMMON POSITIONS***

### **1. Separation between infrastructure management and transport services**

In the current situation a single railway company still dominates the market in every European country. Directive 91/440 aims to create fair and non-discriminatory access to the rail infrastructure through separation of the infrastructure management and train operators. UNICE is convinced that this aim cannot be achieved merely through a separation of profit and loss accounts and balance sheets. Organisational interdependence still exist between rail companies and Member States. Only full organisational separation will lead to equal conditions between existing railway companies and new suppliers of rail services. It will lead to more efficient operations, transparency of railway finances and transparency in public financial support.

#### **PROPOSAL:**

This would be achieved by changing the second indent of Article 1 of Directive 91/440 as follows:

“ by creating separate entities for the provision of transport services and for infrastructure management.”

### **2. Full access for all EU-licensed undertakings to the rail networks in all Member States**

Until now open access to the European railway network has been limited to international groupings and international combined transport. The draft directive amending Directive 91/440 now introduces a Trans-European Rail Freight Network (TERFN), on which open access is permitted for all railway undertakings for international freight services.

UNICE does not agree with the limitation to international freight services, because it means that a railway company cannot perform transport services within other Member States. This limits the possibilities for a railway company to organise efficient transport services at a competitive rate. The prohibition on cabotage makes it difficult to organise return freight for rail services.

UNICE's objective is creation of non-discriminatory access to the entire rail network for all passenger and freight transport services.

#### **PROPOSAL:**

The objective of a comprehensive opening can be achieved by changing Article 10.3 as follows:

“Whatever mode of operation, railway undertakings within the scope of Article 2 shall be granted, on equitable conditions, the access that they are seeking on the Trans-European Rail Freight Network defined in Article 10a and in Annex I for the purpose of operating ~~international~~ freight services.”

### **3. Open access for authorised applicants**

The new Directive replacing Directive 95/19 introduces the definition of an applicant for railway infrastructure capacity. Article 2b clearly states that shippers, freight forwarders and combined transport operators can also be applicants for infrastructure capacity. However, it is left to the individual Member States whether they will allow this.

UNICE is very disappointed that this decision is left to Member States because it will create unnecessary differences within the Union. UNICE supports the principle that a company developing business and assuming commercial risk for particular transport services must be able to obtain a right of access to infrastructure slots.

Furthermore, if shippers, freight forwarders and combined transport operators are allowed to apply for infrastructure capacity, this is restricted to capacity on their respective territories. UNICE stresses that this limits the possibilities to organise rail transport in an efficient way within the Community.

#### **PROPOSAL:**

In order to create equal possibilities for applicants for railway infrastructure capacity UNICE suggests changing article 2b as follows:

(b) “applicant” means a licensed railway undertaking and/or an international grouping of railway undertakings, and, ~~in Member States which provide for such a possibility,~~ other persons and/or legal entities with public service or commercial interest in procuring infrastructure capacity, such as public authorities under Regulation (EEC) No 1191/69 and shippers, freight forwarders and combined transport operators, for the operation of railway service ~~on their respective territories;~~

## ANNEX

### **Additional UNICE recommendations on the Railway Infrastructure Package.**

#### **Extensive access rights (91/440)**

The possibility for Member States to grant access rights that are more extensive than the access rights already agreed on, has been cancelled in the Common Position adopted by the Council. There has been widespread disappointment within industry about this reversal, for it would have created an incentive for Member States to make progress on the liberalisation of their rail networks.

#### **Development of the Community's railways (91/440)**

The slowness which has hitherto characterised the process of reforming the rail sector is a subject of great concern to European companies. UNICE calls for a clear and ambitious liberalisation timetable to be put in place urgently at EU level, with strict deadlines in order to advance the liberalisation process.

#### **PROPOSAL:**

UNICE suggests the following change in the footnote of article 14 of the amended Directive 91/440:

\* ~~Four~~ Two years after the entry into force of this Directive.

#### **Licensing (95/18)**

The proposed amendment of directive 95/18 clearly defines the criteria for obtaining a license for railway undertakings. The amended proposal widens the scope for obtaining a license to all companies active in the sector in order to ensure that no discrimination occurs. This will also allow companies that only offer traction to obtain a license as a railway undertaking.

UNICE stresses the importance that a license is valid throughout the Community. Article 4.5 ensures this objective:

“A license shall be valid throughout the territory of the Community.”

Adoption of the proposal therefore will help to create a level playing-field in the European transport market.

UNICE is concerned about additional national requirements that go beyond the licensing criteria. Especially when these additional requirements are defined very vaguely. It may prevent new suppliers of rail transport from entering the market. Therefore additional requirements should be made on a non-discriminatory basis, as stated in Article 12: “...applied in a non-discriminatory manner...”.

#### **PROPOSAL:**

In order to assure this, additional national requirements should be approved by the European Community. Furthermore, an appeal should be possible on a refused license if this refusal is based on additional national requirements.

#### **Allocation of railway infrastructure capacity**

Capacity is allocated by the infrastructure manager, who is independent of any railway undertaking. Until now there have been no strict rules for the allocation process. This has allowed differences between Member States and priority has generally been given to public services. In the new proposals the allocation principles will be transparent in the network statement.

For UNICE it is essential that the allocation principles are established on a non-discriminatory basis, because preferential treatment of passenger transport is one of the main reasons for the low average speed of rail freight transport.

#### **PROPOSAL:**

In order to achieve this, Article 20.2 of the new Directive should be deleted:

~~“The infrastructure manager may set priority to specific services within the scheduling and coordination process but only as set out in Articles 22 and 24”.~~

### **Complaints procedure**

UNICE underlines the importance of the right to appeal to a regulatory body against decisions adopted by the infrastructure manager. In particular, it supports a rapid response by the regulatory body within two months.

### **Charging rules**

The charging rules are included in the Network Statement and are based on marginal costs. Although the Network Statement is clear in its charging rules, the actual charging system can be disturbed by additional exceptions and mark-ups, which could lead to unequal competition between Member States. UNICE urges for a transparent charging system on a non-discriminatory basis.

UNICE is in favour of equal charging rules for the entire rail infrastructure. Furthermore, the allocation and charging rules should not be restricted to the TERFN. This restriction is an unnecessary measure which will slow down the liberalisation process and will eventually lead to unequal competition.

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