UITP and European rail legislation

The European Union’s treaties view the common transport policy as one of the fundamental components of Europe’s single market. The European Commission has often highlighted rail’s competitive advantages compared to other transport modes by land or air, particularly in terms of its energy consumption, environmental impact and safety record. In the Commission’s view, rail revitalisation and fairer infrastructure charges should trigger a major traffic shift away from our roads and onto the railways.

However, the rail sector is suffering on account of the huge variety and complexity of the technical specifications and operating methods of its various national rail networks. These are restricting rail’s appeal and driving up the cost of building and operating infrastructures, vehicles and equipment. The Commission is trying therefore to introduce European legislation gradually that promotes the emergence of a single railway market throughout the Union and contributes to its development by favouring two concepts: market liberalisation and interoperability.

As we shall see later on, the urban, suburban and regional passenger rail sector is beginning to enter the area covered by the EU’s rail directives. As far as this sector is concerned, interoperability is not a relevant target given the diversity of the networks and their local character. On the other hand, interchangeability between the components and subsystems by means of compatible interfaces, and European harmonisation of certain basic system characteristics, ought to be favoured in order to allow the European Union’s internal market to work more efficiently and to achieve the necessary economies of scale in terms of both network investment and operation.

Yves Amsler, EuroTeam Expert and Advisor to the UITP Secretary General on Projects and Development
Legislation concerning rail-market liberalisation and interoperability

The first directive to liberalise the rail market dates back to July 1991 (91/440/EEC). In June 1995, several directives defined the principles and procedures to be followed in order to access the rail market pursuant to Directive 91/440/EEC:

- Directive 95/18/EC on the licensing of railway undertakings, which excludes from its scope undertakings whose activities are limited to the operation of urban, suburban and regional services (Article 1.2),

- Directive 95/19/EC on the allocation of railway infrastructure capacity and the charging of infrastructure fees.

The first interoperability directive (96/48/EC) dates from July 1996 and only concerns the interoperability of the trans-European high-speed rail system.

These directives were modified or replaced in 2001 by the "first railway package", which was due to be transposed into national law before 20 April 2003.

First railway package

The "first railway package" refers to a set of texts adopted in February and March 2001 and including:

- Directive 2001/12/EC, amending Directive 91/440/EEC and providing for the opening-up of competition of the 50,000 km “Trans-European rail freight network” from 2003, and of other international freight routes from 2008,

- Directive 2001/13/EC, amending Directive 95/18/EC and extending the licensing principle to all sector undertakings,

- Directive 2001/14/EC, repealing Directive 95/19/EC and concerning the allocation of railway infrastructure capacity, the levying of charges for the use of railway infrastructure, and safety certification. It establishes a new framework aimed at constituting an European railway area without borders,

- Directive 2001/16/EC, supplementing Directive 96/48/EC and aimed at establishing the full set of conditions to be met in order to allow interoperability within the territory of the Community between trans-European conventional rail systems.

Directives 2001/13/EC and 2001/14/EC are the first to make explicit reference to the UITP members’ own sector of activity. Indeed, they state (Article 1.2) that: “The Member States may exclude from the scope of:

- **Directive 2001/13/EC**
  - a) undertakings which only operate rail passenger services on local and regional stand-alone railway infrastructure;
  - b) railway undertakings which only operate urban or suburban rail passenger services

- **Directive 2001/14/EC**
  - a) stand-alone local and regional networks for passenger services on railway infrastructure;
  - b) networks intended only for the operation of urban or suburban passenger services,

In turn, Directive 2001/16/EC applies to lines within trans-European transport networks and to the rolling stock operating on these lines. The working method established by the interoperability directives in order to produce the required technical harmonisation consists of defining the necessary minimum in terms of each sub-system, by entrusting a “joint representative body” with the task of preparing “Technical Specifications for Interoperability” (TSIs).

AEIF, the European Association for Railway Interoperability (www.aeif.org), was mandated originally by the Commission with this aim in mind. AEIF represents infrastructure managers, railway companies and industry.


UITP AND EUROPEAN RAIL LEGISLATION
Second railway package

On 29 April 2004, a new set of texts was adopted. This is known collectively as the “second railway package” and comprises three directives and a regulation:

- Directive 2004/49/EC on railway safety, amending Directives 95/18/EC and 2001/14/EC and specifically entailing four series of measures:
  - the creation, in each Member State, of a “safety authority” responsible for regulating and controlling railway safety, authorisations for placing in service subsystems and rolling stock not covered by a TSI, safety inspections and monitoring of mutual recognition of national safety rules,
  - mutual recognition of safety certificates (railway undertakings) and safety authorisations (infrastructure managers) issued by the various Member States,
  - development of common safety indicators (CSIs), common safety targets (CSTs) and common safety methods (CSMs), and
  - definition of common rules for investigations following railway incidents and accidents, with the creation of permanent independent investigation bodies.

- Directive 2004/50/EC on the interoperability of the conventional trans-European rail network, amending Directives 96/48/EC and 2001/16/EC and speeding up application of interoperability standards for the trans-European rail system,

- Directive 2004/51/EC on the development of the Community’s railways, which amends Directive 91/440/EEC and opens up to competition the Union’s entire rail infrastructure used for the transport of freight, i.e. some 150,000 kilometres, by 1 January 2006 at the latest for international services and by 1 January 2007 for all rail freight services,

- Regulation EC/881/2004 establishing a European Railway Agency responsible for railway safety and interoperability, designed ultimately to replace AEIF. This Agency, operational in mid 2005, brings together experts from the rail sector seconded to it for specified periods.

Directives 2004/49/EC and 2004/50/EC are to be transposed into national law within the two years following their adoption. Directive 2004/51/EC should be transposed before 31 December 2005.

Directive 2004/49/EC on railway safety covers all rail modes, including urban modes (metro, tram, etc.). However, Article 2.2 of the Directive states that: "Member States may exclude from the measures they adopt in implementation of this Directive:

- (a) metros, tramway and other urban rail systems,
- (b) networks that are functionally separate from the rest of the railway system and intended only for the operation of local, urban or suburban passenger services, as well as railway undertakings operating solely on these,
- [...]"

Directive 2004/50/EC on interoperability amends Article 1 of Directive 2001/16/EC by adding a third paragraph: "The scope of this Directive shall be progressively extended to the whole conventional rail system, including track access to terminals and main port facilities serving or potentially serving more than one user, except for infrastructure and rolling stock reserved for a strictly local, historical or touristic use or infrastructure which is functionally isolated from the rest of the rail system, and without prejudice to the derogations to the application of TSIs as listed in Article 7."

Other existing or planned rail legislation

Text adopted in 2003

Regulation 1192/2003/EC of 3 July 2003, which amends Regulation 91/2003/EC on rail transport statistics, excludes undertakings whose only activities involve the supply of passenger services by metro, tram and/or light rail.
Texts proposed in 2004:
Third railway package

On 3 March 2004, the Commission adopted a proposal for a “third railway package” containing two communications from the Commission and three proposed legislative texts:

- Directive proposal COM (2004) 139 final, which amends Directive 91/440/EEC on the development of the Community’s railways, and opens up the market in international passenger rail services by 1 January 2010,
- Directive proposal COM (2004) 142 final on the certification of train crews operating locomotives and trains on the Community’s rail network,
- Regulation proposal COM (2004) 143 final on the rights and obligations of international rail passengers.


Indeed, Article 3 of the Directive proposal states that:

“The purpose of this Directive is the certification of train crews operating locomotives and trains on the Community’s rail network for a railway undertaking requiring a safety certificate or an infrastructure manager requiring a safety authorisation.”

The current draft of Regulation proposal COM (2004) 143 final on the rights of international passengers excludes from the proposal’s scope undertakings whose activities are confined to the operation of urban, suburban and regional services, with Article 1.2 referring to Directive 95/18/EC as adopted in June 1995:

“This Regulation shall apply to international journeys undertaken within the Community where the international service is operated by a railway undertaking licensed according to Council Directive 95/18/EC.”

It should be noted that liberalisation of the international passenger rail transport market, by including cabotage, could trigger a conflict of interest with urban and regional passenger rail services, most of which are operated under public-service contracts.

Indeed, Directive proposal COM (2004) 139 final on international passenger services proposes the insertion of the following new paragraphs in Article 10 of Directive 91/440/EEC:

“3(a) Railway undertakings within the scope of Article 2 shall, by 1 January 2010 at the latest, be granted the right of access to the infrastructure in all Member States for the purpose of operating an international passenger service. Railway undertakings shall, in the course of an international passenger service, have the right to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State.

3(b) Member States may limit the right of access defined in paragraph 3(b) on services between a place of departure and a destination which are covered by a public service contract conforming to the Community legislation in force. Such limitation may not have the effect of restricting the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, except where this is strictly necessary to maintain the economic equilibrium of the service defined in a public service contract and has been approved by the regulatory body referred to in Article 30 of Directive 2001/14/EC.

3(c) Member States shall take the necessary measures to ensure that the decisions referred to in 3(b) are subject to judicial review.”
UITP's European Union Committee adopted its position on these three texts prior to their discussion at the Council in December 2004. This position is featured on the European Union website at the following URL:


In UITP's view, all urban, suburban and regional passenger rail transport services - including cross-border - should be excluded from the scope of the proposals COM (2004) 142 (on the certification of train crews) and 143 (on the rights and obligations of international passengers) of the third railway package.

European consultation launched in December 2004 regarding proposed legislation on “technical harmonisation involving the urban rail sector”

The two rail associations concerned with “urban rail”, i.e. UNIFE on the side of vehicle and equipment suppliers and UITP as representative of operating companies (who generally also manage their own infrastructures), adjudged that it was neither wise nor justified to apply to local rail transport the technical texts devised for medium to long-distance rail transport, and that dealing with this sector “on the margins” or “as an exception” would leave it in danger ultimately of having unsuitable, costly and ineffective constraints imposed on it, especially with the tendency of exemptions to disappear from European law. On the other hand, they highlighted the fact that their sector of activity had a European, even global, dimension, which made it inevitable that European legislation would be created that would affect “urban rail”, and that an initiative from the sector itself (as an extension to the “Mass Rapid Transit Initiative for Europe” [MARIE] initiative - an industry forum launched by UITP, UNIFE and the European Commission in 1998) was undoubtedly the most suitable vehicle for producing the right legislation. Indeed, the “urban rail” sector today accounts for roughly half the turnover of the European rail industry, is a sector undergoing steady expansion, and one which is acknowledged as being of major importance in terms of the sustainable development of cities and regions.

This is why the two rail associations decided in summer 2003 to create, in partnership with the European Commission’s “Enterprise and Industry” Directorate General, an informal top-level working group in order to prepare a ‘draft proposal for a directive on the approximation of the laws, regulations and administrative provisions of the Member States relating to Rail Mass Transit installations (RMT installations) and their accompanying supporting documents.

Taking into account the results of these deliberations, and following internal consultations, the Commission launched a three-month-long European consultation on 20 December 2004 (open until 25 March 2005) on the advisability of having European legislation in the field of technical harmonisation of the urban rail sector.

Subsequent steps will involve a consultation by the Commission of the Member States followed by an impact study by the Commission’s various departments. At the same time, and until the launch of the official procedure presenting the text of a directive to the Parliament and to the Council, the rail sector will continue to suggest improvements to the text of the directive proposal.

A briefing on this initiative can be found at the following URL:

http://europa.eu.int/comm/enterprise/rail_guided_transport/urban_rail.htm

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2 The MARIE forum was launched officially in March 1998 by the European commissioners, Neil Kinnoch (Transport) and Martin Bange mann (Industry), Jean-Paul Bailly (President of UITP) and Kaare Vagner (President of UNIFE).
3 Following a decision by the UITP European Union Committee at its meeting in Madrid on 9 May 2003.
4 The mission of the Enterprise and Industry Directorate General is to arrange measures designed to reinforce the competitiveness of European firms. Its role is that of helping to create an environment in which companies are able to flourish, for example by helping to facilitate access to markets and by promoting enterprise and innovation. It favours an industrial policy which guarantees favourable overall framework conditions while at the same time making greater allowance for the specific needs of industry sectors.
Pending text
Another text has been expected since 2001 on charges for trans-European infrastructures (road, rail, etc.), which would make it possible to establish a better economic balance between the transport modes.

Conclusion

At the current state of rail legislation, most UITP Committees are already examining existing texts (Regional and Suburban Railways, Light Rail, Metro, Industry, Organising Authorities, plus, of course, the European Union Committee).

The UITP members affected first by the new rail directives will be the operators of conventional cross-border networks and, as a result, the operators of cross-border tram-train services. European legislation will then be extended gradually to the entire rail sector.

Clearly, the Commission has opted to develop the rail sector as a whole. In order to reach this goal and improve the operation of the European internal market, legislation adapted to the urban, suburban and regional rail sector is essential. Furthermore, this legislation cannot be disassociated from the research, innovation-support and technical-harmonisation actions pursued at the European level.

This is why the actions undertaken in these three spheres must be prepared collectively and accompanied by UITP members if they want to benefit from the sector’s development in their best interests, and if it is their intention to convey to people and impress upon them local public transport’s specific hallmarks.

Bodies hosting European rail dialogue:

- AEIF (European Agency for Railway Interoperability)
- ERA technical committees (ERA = European Railway Agency)
- European standardisation bodies (CEN, CENELEC, ETSI)
- ERRAC (European Rail Research Advisory Council)
- RMMS (Rail Market Monitoring Scheme)
- European intersectoral social dialogue committee for railways
- Various working groups and ad hoc research and standardisation consortia
European regulatory activity impacting the rail sector

Documents are available on Internet at URL: http://europa.eu.int/eur-lex/en/search/search_lif.html

**General legislation (non rail specific)**

**White Papers**

**Environment and safety**


20) Communication COM(2003) 301 final from the Commission of 27 May 2003 : Towards a thematic strategy on the prevention and recycling of waste


Various Technical


34) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (see also Regulation 45/2001/EC)
36) Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level
44) Regulation 45/2001/EC of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (see also Directive 95/46/EC)
46) Regulation 1882/2003/EC of the European Parliament and of the Council of 29 September 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty


**Public labour markets and service suppliers**

50) Council Regulation 1017/68/EEC of 19 July 1968 applying rules of competition to the transport by rail, road and inland waterway

51) Council Regulation 1191/69/EEC of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, modified by 1893/91/EEC

52) Regulation 1192/69/EEC of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings


67) Amended proposal COM(2002) 0107 final of 21 February 2002 for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway (presented by the Commission pursuant to Article 250(2) of the EC Treaty)

**Rail specific legislation**

**Legislation on market opening and interoperability in the railway sector**


**The first railway package and related legislation**


The second railway package and related legislation

The third railway package

Other railway legislation
94) Proposal COM(2005) 32 final of 8 February 2005 for a Council Directive on the agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services