

BRUSSELS RAIL TRANSPORT BRIEF: NOVEMBER-DECEMBER 2020

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European Regulatory Newsletter

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Commission Approves €1.5 Billion Dutch Scheme to Compensate Public Transport Companies for Damages Suffered During COVID-19

On 9 November 2020, the European Commission approved, under European Union (EU) state aid rules, a Dutch scheme of €1.5 billion to compensate companies providing regional and long-distance public passenger transport services in the Netherlands for the damage suffered due to the COVID-19 outbreak. The Dutch scheme is designed to compensate operators that provide public transport services based on contracts with regional or national authorities. The aid will cover damages suffered while fulfilling their contractual obligations under the circumstances determined by the COVID-19 outbreak and the resulting containment measures. The support is aimed at compensating for the damages incurred between 15 March and 31 August.

Commission Sends Statement of Objections to České Dráhy for Alleged Predatory Pricing

On 30 October 2020, the European Commission informed České dráhy (ČD) of its preliminary view that ČD has breached EU antitrust rules by charging prices below costs.

In November 2016, the European Commission had opened a formal antitrust investigation to assess the alleged predatory conduct of ČD relating to the provision of rail passenger transport services in Czechia and, in particular, on the Prague-Ostrava route. The formal investigation was followed by inspections at the premises of ČD in April 2016.

Commission Approves €600 Million German Scheme to Support Single-wagon Rail-Freight Transport

Single-wagon rail-freight transport operators in Germany will be able to receive up to €600 million in state support. The European Commission approved the scheme under EU state aid rules. The program will allow the “modal shift” of freight traffic from road to rail and will run until 30 November 2025, making the use of single-wagon rail-freight transport less costly. The measure is part of the Climate Action Programme 2030 of the German federal government.

The aid will take the form of direct grants to rail-freight operators active in the single-wagon transport segment. The scheme intends to relieve rail-freight transport companies from a part of the costs that are linked to charges for using marshaling yards and train-formation facilities.

The European Commission found that the measure will improve the competitiveness of European railways and foster the shift of freight traffic from road to rail, in line with the EU's environmental and transport objectives, without unduly distorting competition.

Commission Approves Austrian Measures to Support Rail Freight and Passenger Operators Affected by the Coronavirus Outbreak

On 25 November 2020, under EU State aid law, the European Commission approved two Austrian initiatives to support the rail freight sector and one to support the rail passenger sector in light of the coronavirus outbreak. The measures are aimed at boosting the rail freight industry and ensuring increased public support to further promote the transfer of freight from road to rail.

The first measure amends the 2020 budget of an existing support scheme, which will cover grants for a total estimated amount of €150.7 million in 2020.

The second measure has an estimated budget of €115.7 million and will enable Austria to relieve rail freight operators of the costs related to track access charges (i.e., the charges that railway undertakings have to pay for the use of the rail network) during the period 1 March to 31 December 2020.

The third measure introduces temporary relief for rail operators providing passenger services on a commercial basis. With a budget of approximately €9 million, the measure will waive the payment of track access charges due by commercial rail passenger transport operators during the period of 8 October to 31 December 2020.

RAIL REGULATORY AND POLICY

European Council Approves Informal Deal on Rail Passenger Rights

On 21 October 2020, the European Council endorsed a reform of rail passenger rights. The updated provisions strengthen the rights of all passengers, in particular those with disabilities or reduced mobility; modify rules on rerouting; make it easier to transport bicycles on trains; and promote the use of through-tickets. Each change is explained in more detail below:

- Rail companies will be encouraged to increase the offer of *through-tickets*. Passengers must be informed whether tickets bought in a single transaction constitute a through-ticket. The rail company will otherwise be liable as if those tickets were a through-ticket.
- Passengers will enjoy *improved protection in an increased number of different rail services*, as a large number of exemptions allowed by the current regulation will be phased out.
- Stronger rights for *people with disabilities or with reduced mobility* will apply in the future, as the current exemption of regional trains from most of the provisions related to persons with disabilities or reduced mobility will be completely phased out by 2023.
- Passengers will be informed of available bike capacity. Railway undertakings will be obliged to install spaces for bicycles.
- The new rules will clarify and expand protection in cases where passengers need *rerouting* to their final destination. The rail operator will have to try to reroute the passenger in all circumstances, including cases requiring alternative modes of transport.

- The minimum *compensation for delays* will remain unchanged (25 percent of the ticket price for a delay of 60 to 119 minutes and 50 percent of the ticket price for a delay of 120 minutes or more).
- A *force majeure* clause addressing compensation for delayed rail services will bring legal clarity. Rail companies will not need to pay compensation for delays or cancellations in circumstances they could not have avoided, such as extreme weather conditions, major natural disasters, or major public health crises, including pandemics.

Welsh Government Takes Control of Transport for Wales Rail Services

On 22 October 2020, the Welsh government announced plans to bring Wales & Borders passenger services under public management.

Wales & Borders services are currently operated by a joint venture of SNCF subsidiary Keolis and engineering company Amey under a 15-year operator and development partner contract awarded by the Welsh government, which began in 2018.

Under the new financing and operating model, which is to be finalized in the coming months, responsibility for day-to-day operations would be transferred from KeolisAmey Operations Ltd. to a new subsidiary of government agency Transport for Wales, operating under its own license and approvals, and will be regulated by the Office of Rail and Road. The transfer is expected to take place in February 2021.

New Harmonized Procedures Across EU: The Technical Pillar of the Fourth Railway Package Becomes Mandatory

The deadline for member states to transpose the technical pillar of the Fourth Railway Package has passed (31 October). The Fourth Railway Package is composed of two pillars (“technical” and “market”) and a set of six legislative texts designed to complete the single market for rail services (Single European Railway Area). The “technical pillar” includes:

- Regulation (EU) 2016/796 on the European Union Agency for Railways and repealing Regulation (EC) n° 881/2004, granting the European Union Agency for Railways (ERA) powers to become Europe's single certification body for rail vehicles and railway traffic operators.
- Directive (EU) 2016/797 on the interoperability of the rail system within the European Union (Recast of Directive 2008/57/EC)
- Directive (EU) 2016/798 on railway safety (Recast of Directive 2004/49/EC)

Commissioner for Mobility and Transport Adina Vălean said: *“This is an important day for the European rail sector—the transposition deadline for the rail safety and interoperability directives. The full implementation of the Fourth Railway Package across the whole EU is key to boost rail transport. Therefore, I count on the Member States which haven’t transposed it yet to do their utmost to fulfill this obligation very soon. The implementation of its technical pillar will significantly simplify procedures and reduce costs for railway undertakings operating across Europe. We are making rail more efficient, safe, affordable, and thus more competitive vis-à-vis other modes of transport. This is a big step on our way to decarbonize Europe’s transport sector and to make rail more attractive ahead of 2021—the European Year of Rail.”*

ERA will take responsibility for vehicle authorization, safety certification, and European Rail Traffic Management System trackside approval across all member states.

New Regulation for Dangerous Goods Published by OTIF

The Intergovernmental Organization for International Carriage by Rail (OTIF) has published a new edition of the regulation concerning the International Carriage of Dangerous Goods by Rail.

The new regulation will enter into force on 1 January 2021, and includes several new features that take into account the technical and scientific progress contributing to further improvement of safe carriage by rail and clean and energy-efficient mode of transports. The new regulation also contains references to new checklists for the filling and emptying of tank wagons for liquids and gases to improve safety during transport.

Commission Calls on Greece, Austria, and Luxembourg to Fully Transpose EU Rules Aiming at Establishing a Single European Railway Area

On 3 December 2020, the Commission decided to send letters of formal notice to Greece, Austria, and Luxembourg for failing to comply with EU rules aiming at establishing a Single European Railway Area. The legislation regulates different domains, such as the right of operators to pick up and drop off passengers, principles of establishing, determining and collecting charges and infrastructure costs, exceptions to these principles, the signing of a contractual agreement between the competent authority and the infrastructure manager, as well as cooperation between regulatory bodies.

All provisions should have been transposed into national law by 16 June 2015, which did not occur in Greece, Austria or Luxembourg. Additional letters of formal notice were sent to Austria and Luxembourg for non-communication of measures foreseen under the same Directive. The three Member States now have two months to address the Commission's concerns. Otherwise, the Commission may decide to send a reasoned opinion, which will mean it will enter the second stage of an infringement procedure. If the country still doesn't comply, the Commission may decide to refer the matter to the Court of Justice and if despite the court's judgment, the country still doesn't rectify the situation, the Commission may refer the country back to the court.

EU Mobility Strategy Published

On 9 December 2020 the European Commission presented its 'Sustainable and Smart Mobility Strategy' together with an Action Plan of 82 initiatives. This strategy lays the foundation for how the EU transport system can achieve its green and digital transformation, and become more resilient to future crises. As outlined in the European Green Deal, the result will be a 90 percent cut in emissions by 2050, delivered by a smart, competitive, safe, accessible, and affordable transport system.

The strategy suggests that road and rail transport should use a mix of electricity and hydrogen and boost emissions standards for cars in 2021 and trucks by 2022 to encourage a switch to zero-emission vehicles. These objectives will contribute to a decisive action to shift more activity towards sustainable transport notably increasing the number of passengers traveling by rail and commuting by public transport active modes, as well as shifting a substantial amount of freight into rail and inland waterways and short sea shipping.

By 2050, Brussels aims to have a "truly multi-modal system of sustainable and smart transport options." This means doubling rail freight traffic, increasing high-speed rail traffic, and completing the trans-European transport network with an innovative traffic management system.

PUBLIC PROCUREMENT AND NEW PROJECTS

The Rail-2-Sea Initiative Launched

On 19 October 2020, GRAMPET Group – Grup Feroviar Român started the Rail-2-Sea project. The Rail-2-Sea initiative aims for the modernization and development of a railway line between Gdansk, Poland, and Constanța, Romania. The project brings together 12 countries (Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Austria, Croatia, Romania, and Bulgaria) and is part of a wider initiative, the Three Seas initiative. The Three Seas initiative aims to promote cooperation for the development of infrastructure in the energy, transport, and digital sectors. It targets new investments, economic growth, and energy security.

Italy Signs Hydrogen Rail Agreement

On 26 October 2020, Italian state-owned rail operator Ferrovie Dello Stato (FS Italiane Group) signed a memorandum of understanding with the gas transport group Snam to evaluate the technical and economic feasibility of using hydrogen in rail transport and to develop new business models.

The agreement aims at implementing analyses and feasibility studies and developing joint projects on railway transport that can be converted to hydrogen on the national territory. The two companies will establish a joint working group focused on evaluating possible pilot projects involving the replacement of fossil fuels with hydrogen.

The companies will experiment with innovative technological solutions related to the production, transport, compression, storage, supply, and usage of hydrogen as a contribution toward the development of sustainable mobility, including by participating in joint initiatives that are subject to potential public contract tenders or funding.

Construction Works for Hesse Hydrogen Filling Station Inaugurated

On 27 October 2020, the State Secretary of the Hessian Ministry of Economics and Transport, Jens Deutschendorf, inaugurated the construction work for a hydrogen station for trains in Hesse, Germany.

Rhine-Main Transport Association (RMV), Alstom, and Infraserb Höchst, the industrial park operator, are involved in the construction of the second hydrogen station worldwide for passenger trains. The station will be operational in December 2022.

For the €500 million project, Alstom will supply the fuel cell trains that RMV will use, while Infraserb Höchst will build and operate the filling station. Alstom's hydrogen trains will also replace the diesel-powered locomotives ordered by RMV's subsidiary, Fahma.

Siemens Announces Partnership with Deutsche Bahn to Develop a Hydrogen Train

Siemens Mobility and Deutsche Bahn have laid out proposals to build and test a hydrogen fuel-cell train. This is the latest example of leading businesses taking steps towards a technology that will have an important impact on the environmental footprint of transport networks. The trial is set to begin in 2024 and will see a train trip between Tübingen, Horb and Pforzheim in the southwest German state of Baden-Württemberg. Financial support is to arrive from the Federal Ministry of Transport and Modern Technology in Germany. At the moment, nearly 1,300 diesel-powered trains are used by Deutsche Bahn on regional routes. Moreover, about 40 percent of its 33,000 km sprawling network is not yet electrified.

European Funds Approved for Warsaw Train Acquisition

Poland will receive €46 million in funding approved by the European Commission from the Cohesion Fund for the acquisition of electric multiple units and the modernization of a depot station in Warsaw. The aim is to improve public transport in Warsaw as well as to increase in-house maintenance capabilities and efficiency of the transport provider.

The European funding will support the procurement of 21 electric multiple units under a contract signed between SKM, the Warsaw rail operator, and Newag in April 2020. Under the contract, the Polish rolling stock manufacturer will deliver 15 five-car trains and six four-car EMUs.

The contract, valued at €149.45 million, involves inspection and repair services for seven years. The project has also received €45.3 million of European financing from the OP Infrastructure and Environment 2014–2020.

The trains are expected to provide rail passenger transport services by the end of 2022.

Rail Cyber Security Center to be Developed

Egis, a French engineering group involved in the areas of infrastructure and transport systems, and Cylus a global leader in rail cybersecurity, entered into an agreement to create a rail cybersecurity center of excellence for rail-focused and cybersecurity services.

The move comes at a time when cybersecurity is becoming a growing concern for the railway industry with increased digitization and implementation of new technologies. The center will support rail companies in building their cyber resiliency and securing their critical networks.

The rail cybersecurity Centre of Excellence will support all the aspects of rail cybersecurity which include cyber strategy and governance, gap and risk analysis, pen testing and attack simulation, vulnerability management, cyber threat detection, incident response, cybersecurity awareness and training, as well as the integration and project management.

Austria Approves Hydrogen Trains

On 3 December 2020, the Austrian Federal Ministry for Climate Protection, Environment, Energy, Mobility, Innovation and Technology (BMK) officially approved the Coradia iLint hydrogen train that has recently successfully completed three months of test operation on the Austrian regional lines. The train will run in the southern part of Lower Austria and on the railway network of the inner and outer of Aspangbahn, in Vienna, as well as on the route between Wiener Neustadt and Puchberg, 80 km far from Vienna.

Austria is the second country in Europe, after Germany, to approve fully hydrogen trains as an emission-free alternative to diesel multiple units.

SNCF Réseau and Liberty France Announce Approval of First Recycled Steel Rails

France's SNCF Réseau, on 10 December 2020, granted safety approval for "green" rails (Greensteel rails) made from recycled steel, which are produced with 90 percent less CO₂ than conventional rails. The rails will be used on the French network. Recycled scrap steel and old train rails are melted using electric arc furnaces, then re-rolled into new rails. The electric melting process emits 180 kgs of CO₂ per ton of steel, versus 1,633 kgs of CO₂ per ton of steel using conventional blast furnaces that make new steel from iron ore and coking coal. This marks a significant first step in the development of a French and European Greensteel rail sector.

Night Trains to Connect European Cities

Four major European rail companies are improving night trains. The €500 million investment was announced by the state railways of Germany, Austria, France and Switzerland, and comes a year after the German government declared railways crucial to its plans to cut carbon emissions from travel by air. Rising climate issues linked to the carbon footprint and short-haul flights have made the project possible. The agreement reached on 8 December 2020 will see Austria's ÖBB, with the support of Germany's Deutsche Bahn, France's SNCF and Switzerland's SBB, connect Vienna and Paris from the end of next year. Plans are also put in place to connect Berlin with Paris and Brussels in 2023.

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