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Item 5 (e) of the provisional agenda

**Strategic questions of a modal and thematic nature:****Rail transport****Railway Reform across the region of the Economic  
Commission for Europe****Note by the secretariat****I. Introduction**

1. As part of the ongoing work of the Working Party on Rail Transport (SC.2), the seventy-first session of SC.2 hosted the workshop on railway reform across the ECE region, and was attended by member States, intergovernmental organizations, non-governmental organizations and the private sector. As an output to this workshop a study has been prepared to summarise railway reform across the region. This document provides a summary of the study; the full publication will be made available in the first half of 2018.

**II. History of railway reform**

2. This paper outlines the evolution of European Union rail legislation in its member States with respect to three major areas: separation of infrastructure management and service operations; market opening and liberalization of the rail services; and promotion of interoperability and technical harmonization to encourage the development of an integrated rail system leading to a single European rail area. The European Union approach to reform has been based on the idea that greater competition makes for a more efficient and customer-responsive industry.

3. In the early stages of reform, rail proved to be reluctant to pursue liberalization, especially when compared to other modes of transport. Directive 91/440/EC, that is the first important measure of the European Commission concerning the rail sector, had little impact, as was shown by the small number of new operators or services that were added to the market. In the following years, the four regulatory “Railway Packages” that had been approved in 2001, 2004, 2007 and 2016, were aimed at countering this lack of progress.

The packages consecutively brought together previous Directives, updated them, and facilitated market development.

4. The Fourth Railway Package which includes a “Technical Pillar” for rail safety and interoperability, and a “Market pillar” for the governance of railways and the opening of the passenger market was proposed by the European Commission in 2013, and was originally intended to remove all remaining legal, institutional, and technical obstacles to create a single European railway area.

5. When initially presented, the market pillar set out far-reaching measures to enable new entrants to access the market. However, the market pillar’s revised texts, formally adopted by the Council of Ministers and by the European Parliament in 2016, incorporate significant changes from the Commission’s original proposals, which many commentators believe are not as ambitious as the original proposals. Following the entry into force of the technical pillar in 2016, the European Railway Agency was replaced by the European Union Agency for Railways, which has been entrusted with a stronger role in vehicle authorization and safety certification.

6. When looking to the extra-European Union ECE countries, the paper finds that railway reform is being undertaken according to different models and is proceeding at different paces. Three broad groups of countries can be identified. The first group includes Central and Northern European countries, i.e. Norway and Switzerland. The second group includes countries officially or potentially candidate to join the European Union in Southeast Europe. Those under the “Stabilization and Association Process” which precedes accession to the European Union are developing their railway structural policy according to the principles of the European Commission railway packages. The third group of countries includes the republics of the former Soviet Union. These, in turn, can be separated according to the progress of reforms. Kazakhstan and the Russian Federation have made certain progress in reforms developing the “Russian-specific” reform model. In Ukraine and Uzbekistan, reforms are widely discussed, and some legal acts are adopted, although practical steps seem to be moderate. In Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Republic of Moldova, Tajikistan, and Turkmenistan, reforms have not been yet planned.

### **III. Railway reform implementation**

7. The paper first discusses the topic of transposition of European Union legislation and implementation of legislative requirements. Most of the European Union legal instruments were adopted in the form of a Directive, meaning that their implementation into national legal systems is required for them to be fully binding. Moreover, member States need to not only transpose the Directives into national law, but also implement the requirements. In 2015, most member States either did not transpose or transposed incorrectly a significant share of the total. This has created obstacles towards achieving the objectives underpinning European Union railway reform, as well as opened the door for diverging arrangements and provisions to develop between European Union member States. The period of structural changes in the European Union railway sector should be concluded with the adoption of the Fourth Railway Package, and the focus in the coming years will be on the implementation of existing legislation.

8. Secondly, the paper discusses the role of rail regulators. This section describes the different approaches that European Union member States chose while creating their respective regulatory bodies, in relation to their structures and powers. This section also sets out the specific experience of a number of extra-European Union countries with respect to the evolution of the role of transport ministries and the establishment of rail regulators.

The Italian experience of an independent and multimodal regulator is an example of a good practice.

9. The paper then discusses the issue of implementing requirements for the separation of infrastructure management and service operations within the rail incumbent. This section describes the various separation arrangements existing in the ECE countries, ranging from full vertical integration, through organizational separation (also referred to as “holding model”), to full institutional separation. This section finds that, despite the formal transposition of regulation on separation of the rail incumbent, the actual organization of the rail industry still largely relies on state-controlled companies.

10. The paper outlines the specific experience with respect to separation in a number of ECE countries. In the United Kingdom of Great Britain and Northern Ireland, where full institutional and ownership separation was first achieved, proposals for vertical re-integration of rail operation and infrastructure management have been put forward, in the form of severing the national infrastructure manager into regional branches and of aligning track and train operations by creating shared targets between infrastructure managers and train operators at a route level. The experience of the United Kingdom suggests that further initiatives aiming at reforming the railways in the ECE region take into full consideration the importance of coordination between infrastructure management and rail operations when considering vertical separation.

11. The paper then discusses the issue of implementation of requirements relating to market opening. This section discusses the experience from ECE countries with respect to market access models, including tender concession model for subnetworks (i.e. competition for the market) and the open-access model (i.e. competition in the market). The paper outlines the specific experience with respect to market access arrangements in a number of ECE countries.

12. When looking to the European Union, the paper finds that effective competition in the passenger market is still very limited. Competition for the market is subject to public competition only in eleven European Union member States, and with mixed success. Even where public tenders have been held, direct awards have often been necessary due to a lack of participation by non-incumbent operators, who have been discouraged by de-facto barriers to entry. Competition in the market is allowed in fifteen European Union member States, but only in six multiple operators compete in the rail market. The paper sets out as well as the experience of new entrants in the freight and passenger markets. In this regard, the paper finds that the rail sector remains heavily concentrated, and characterized by a low number of newcomers and the persistence of large market shares of incumbent operators.

13. The paper then discusses the issue of implementation of requirements relating to interoperability and technical harmonization. This section discusses the role of the European Union Agency for Railways and the status of adoption and implementation of Technical Specifications for Interoperability (TSIs). The full potential of interoperability will be achieved when all interoperability-relevant technical aspects are harmonized in TSIs, all national technical rules covering aspects harmonized in the TSIs are withdrawn, and all physical assets and procedures comply with the target systems defined by the TSIs. The withdrawal of national technical rules is a long-term goal and numerous exceptions still exist.

14. The paper then discusses the effects of reform on railway performance, including cost and efficiency measures, prices, customer satisfaction and service quality. The available evidence from countries that have introduced competitive tendering for awarding public service contracts suggests the possibility for operating cost savings. The available evidence on the effects of open access competition is limited so far, suggesting a mixed picture of the possible effects.

15. With respect to modal share of rail transport, this section suggests that regulatory reforms in the European Union might have contributed to stabilise the modal share of rail passenger transport, and possibly even stimulated modest improvements. While there is little evidence that railway reform per se has not lead to a sustained increase in the market share of rail in passenger or freight, it is also true that many of the markets have not been reformed for enough time to allow for long-term shifts to appear. There are examples where this reform has had an impact, which should not be ignored and point to the potential of further benefits to the sector in the long term in relation to reduced costs, increased competitiveness and increased market share going forward.

#### **IV. Conclusions**

16. This study shows that railway reform across the ECE region has taken different forms in terms of institutional structure, market participants and development of the sector. Each of the models adopted have been very successful in some areas and less so in others but these degrees of success have not been consistent across similar reform approaches. It is clear, therefore, that there is no standard model to railway reform and no one-size-fits-all solution that can be applied across the ECE region, and that each country needs to ensure that the model that it adopts is consistent with its national environment and requirements while ensuring that the sector is in a sound financial position to be able to transition successfully through reform and improve the competitiveness of rail.

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