

Cross-border Impact Assessment 2016

Dossier 9: Cross-border train travel - Fourth Railway Package



The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM is the pivot of research, counselling, knowledge exchange and training activities with regard to cross border mobility and cooperation.

Maastricht University

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Dossier 9: Cross-border train travel – Fourth Railway Package

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Table of Contents

1.	Introduction	1
2.	Research Objectives, Definitions, Themes and Indicators	2
2.1	Defining the research in time and space.....	3
2.2	Objectives of the impact assessment.....	4
3.	Does the measure promote or impede European integration and what does that mean for the citizens of the border regions	7
4.	Does the measure promote or impede Euregional cohesion and Euregional governance structures?	9
5.	Conclusions and avenues for further study	14

1. Introduction

*'Het mag als bijzonder contradictorisch bestempeld worden dat net met de start van de Europese Integratie, die van het opheffen van de grenzen haar paradepaardje maakte, het voor de reizigers steeds moeilijker werd met het openbaar vervoer diezelfde grenzen te overschrijden.'*¹

(It can be characterized as extremely contradictory that just as European integration was taking off, which made the elimination of borders its flagship, it became increasingly difficult for travellers to cross those same borders by public transport.)

The Western European Member States have the most developed rail network in the world. The reasons for this are largely historical. The first railway on the European mainland came into use between Mechelen and Brussels in May 1835, and at the beginning of the twenty-first century, there was a dense network of railways through the Low Countries. The great surge in rail transport ended after World War II. The Belgian net saw a number of rationalisation measures between 1950 and 1980. The local railways and some smaller lines were eliminated or shortened, which led to many dead-ends. More in particular, the cross-border lines were the main victims of this practice.² This trend has continued in Belgium since the 1980s, albeit in lighter form. In Germany the network has shrunk too, while the number of kilometres of track remained fairly stable in the Netherlands.³

The fragmentation and underutilization of the European rail network was already noted in the 1980s by the European Commission, which suggested the realisation of a single market for rail transport as a remedy. The European legislators attempted to realize this unification via so-called track packages (Railway Packages). The previous three railway packages have been insufficient, however: many of the reforms which the Commission had hoped for have not been realized, not only due to the lack of ambition in the legislation framed for the purpose, especially with regard to the harmonization of technical and safety standards, but also due to the half-hearted implementation by the Member States. As a result, the European Commission felt compelled in 2008 to open twenty-four cases with the European Court of Justice to enforce the implementation of the first railway package, legislation which should already have been implemented in national legislation in 2003.⁴

Moreover, (cross-border) public transport by rail remained largely unaffected by these reforms due to the many exemptions and long implementation periods. The relative importance of the train as a means of transport has further decreased in the last few years, which is a sad evolution,

¹ Peeters & Smilde (2010) Naar grenzenloos interlokaal personenvervoer. Studie in opdracht van Algemeen Nederlands Verbond & TreinTramBus. november 2010. p10 (Towards borderless interurban passenger transport. Study commissioned by Algemeen Nederlands Verbond & TreinTramBus) Available via <http://www.mobielvlaanderen.be/studies/grip/eindrapport.pdf>

² Ibid.

³ World Bank (2016) The World Development Indicators. Available via <http://data.worldbank.org/indicator/IS.RRS.TOTL.KM?locations=BE>

⁴ Dehousse, Franklin & Benedetta Marsiola (2015) The EU's Fourth Railway Package: a new Stop in a Long Regulatory Journey. Egmont Papers n°76. Brussels: Egmont Institute for International Relations : p12

also from an environmental perspective. The laborious realisation of a train connection between Maastricht and Aachen shows how difficult it is to realize new railway lines in the current political and economic context. The ordeal of establishing the Spartacus tram line from Hasselt to Maastricht reinforces this image. But even if the infrastructure is available, the presence of high-quality public rail transport is not self-evident. Several train lines in the Euregion Meuse-Rhine fell into disuse in the second half of the 20th century (e.g. Neerpelt-Weert), whereas service levels declined on others. Maastricht, for instance, used to have a direct connection to Brussels in 2009, the so-called Maastricht-Brussels Express. Today, however, travellers have to travel via and transfer in Liege.

Several initiatives from the region, such as those taken as part of the INTERREG IV-M3 project, have opened the way to better service. This contribution studies whether the Fourth Railway Package will reinforce or weaken this process.

2. Research Objectives, Definitions, Themes and Indicators

The Fourth Railway Package is comprised of three directives and three regulations, which were soon organised into three pillars in the discussions following the proposals of the Commission.⁵ The first pillar is the least politically sensitive and aims to reduce the technical obstacles to the single European railway market. Despite previous directives and regulations, Member States often still apply different technical and safety standards. This implies, among other things, that all the rolling stock must comply with the standards of the different Member States whose networks are used by the locomotives and wagons. This constitutes an important obstacle for cross-border transport. More specifically, this pillar comprises two directives and one regulation. The two directives pertain to the standardization of the safety standards used and the rules for interoperability.⁶ The regulation refers to a revision of the competences of the Railway Agency of the European Union, as the Fourth Railway Package will give this agency the authority to issue permits that are valid throughout the European Union.⁷

The second pillar is politically more sensitive and pertains to the market effect of passenger and other transport by rail in the Member States.⁸ More specifically, it refers to the further liberalisation of the national markets. In many Member States, services are still dominated by a national monopoly that is assured of obtaining a portion of the market through private contracts. The legislation proposed by the Commission would make public services contracts the rule and private contracts the exception.

⁵ See Dehousse & Marsiola (2015). Sometimes the pillars regarding the management structures of national rail transport and the awarding of public contracts are joined under the 'political pillar' or the 'market pillar' (cfr. European Parliament: <http://www.europarl.europa.eu/news/nl/news-room/20160427BKG24994/the-4th-railway-package> consulted on 5 October 2016)

⁶ Directive 2016/797; Directive 2016/798

⁷ Regulation 2016/796

⁸ 2013/0028 (COD)

The third and last pillar relates to the administrative structures that regulate the relationship between the net manager, the competent authorities and the service provider(s).⁹ The key point of discussion here is the degree of independence of the net manager from the service providers. This pillar also provides for the setup of a European network of infrastructure managers with the task of following up and continuing the coordination between the various networks.

2.1 Defining the research in time and space

The decision-making process on the fourth railway package has only recently been completed. There was relatively limited discussion about the technical pillar, and the impact studies showed clear benefits, which were not disputed.¹⁰ The Member States requested and obtained a number of concessions aimed at the perpetuation of the national agencies that currently provide the safety certificates. The two regulations and the directive were adopted by the European Parliament and the Council of the European Union in April 2016 and published in the Official Journal of the European Union on 25 May 2016. The pillar on market effects and management structures was more politically sensitive¹¹ and an informal agreement was reached under the Dutch presidency by the end of April 2016, after a trilogue. The consolidated text has not been published to date, although the key amendments to the Commission's original proposal did become clear in the days following the publication of the agreement. The legislation is expected to be published at the end of 2016, after a legal check and the necessary translation work. This impact measurement, however, did not have access to these documents yet.¹²

As such, this impact measurement attempts to make an *ex-ante* assessment of the frontier effects of the fourth railway package. Not only the recent conclusion of the legislative process can justify this focus; the (long) implementation periods of ten years provided by the legislators makes it difficult to observe any effects at this early stage. In addition, the Member States will retain the authority to grant 15-year licences until 2019, so that the Belgian railway market will in principle have a national monopoly until 2034.¹³ Also, due to the transition arrangements provided for in the technical pillar, it will take some time before actual *ex-post* effects become observable and measurable. The impact measurement will therefore consist of a document analysis with the objective to map the main implications for border regions. The sources of this measurement are the original legislative proposals as drawn up by the European Commission, the opinions of the Committee of the Regions and the European Economic and Social Committee, the three impact studies commissioned by the European Commission as well as the amendments of the European Parliament and, if available, the final, approved legislative texts.

⁹ 2013/0029(COD) & 2013/0013(COD)

¹⁰ SWD/2013/08 final

¹¹ Although the impact assessments of the Commission showed a larger positive effect of the political pillar, they were criticized from multiple sides (Dehousse et al. 2015))

¹² The last available documents at the time of writing were the proposals of the Council published on 18 October 2016

¹³ Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail- Adopted by the Council on 17 October 2016 Doc n° 11198/1/16 REV 1: Art 1(9)a

A starting point for any impact assessment is the demarcation of the area for which the effects will be analysed. As previously stated, the Commission only had the impact on the EU as a whole investigated. At the national level, this task was left to the Member States. The Dutch government, for instance, already ran a quick scan shortly after the publication of the Commission's proposals.¹⁴ Both analyses do not specify the effects of the relevant legislation for border regions.

The analysis that follows abstracts in a way, based on the specific region to which the findings are applicable. The focus is on cross-border rail transport, which implies at least two consecutive train stops in two different countries that belong to the same border region. In order to make the analysis more concrete, examples are taken from the Euregions Meuse-Rhine. This implies that we depart from the regulations to first draw a number of general lessons on cross-border passenger transport and then examine the consequences for service provision on the cross-border railway connections between (South) Limburg (NL) and the border region at large. Following the definition, there are three connections to be analysed: the connection between Maastricht (NL) and Visé (B), between Heerlen and Aachen (D), between Welkenraedt (B) and Aachen, as well as the planned links Hasselt (B)-Maastricht and Neerpelt-Weert (NL). Specific attention is paid to the cross-border public transport that is inter-urban in nature rather than to international, commercial transport. The latter type of transport, if available, is usually limited to the largest cities of a border region.

2.2 Objectives of the impact assessment

The fourth railway package primarily aims to promote the use of rail transport in the EU. Subsequent sections particularly focus on studying the effects on European integration and the development of cross-border governance structures. Despite the effects of the railway package on cross-border socio-economic development, this will not be part of the analysis. These effects tend to be secondary rather than primary, being an indirect result of the increased mobility of students, workers and consumers in the border regions.

1. Effects on European integration

European integration consists of the elimination of border effects. In a single market, distance would have a similar effect on domestic and cross-border economic activities, whether they be shopping, working, studying or trading. In this respect, the facilitation of cross-border passenger transport is a necessary condition for the mobility of persons, and public transport has a crucial role to play. The challenges in the area of quality, accessibility and the cost price of cross-border public transport imply the existence of an obstacle to the realisation of European integration. Just as the arrival of the railways was instrumental in opening up the many cultural islands that made

¹⁴ RebelGroup, GoudAppel, Movaris (2013) Quick scan impactanalyse van het Vierde Spoorwegpakket: De effecten voor Nederland. Studie voor het Ministerie van Infrastructuur en Milieu 25.10.2013 (Quick-Scan Impact Analysis of the Fourth Railway Package: The effects for the Netherlands. Study for the Ministry of Infrastructure and the Environment)

up Belgium in the 19th century, so one may also expect the improvement of cross-border local passenger transport to promote European integration. Translated into the evaluation of the fourth railway package, the cost price and service provision are quite relevant.

The effect of a (possibly) improved cost price on European integration depends largely on the type of service offered. For commercial services on the rail network (competition by rail), a reduction in the costs will advance the time at which it becomes profitable to operate a cross-border line. Existing lines may reduce ticket prices without sacrificing profit. If the exploitation of a cross-border connection takes place under a public-service contract, i.e. competition over railway lines, the effects for travellers are less clear cut. Ticket prices are often fixed, and, depending on the competition for the contract, the benefits will be distributed among the competent authority, i.e. the taxpayer, the service provider or the traveller.

The quality of services pertains to, inter alia, the search and organization costs associated with cross-border transport. This has, among other things, to do with the purchase of tickets, the provision of information on the connections and the ability to give cross-border transport equivalent treatment during promotional activities. The effects on European integration are summarized in the first row of Table 1.

Table 1: Principles, benchmarks and indicators

Principles	Benchmark	Indicator/Method
<p><u>European Integration</u></p> <p>Article 45(2) Treaty on the Functioning of the EU describes the freedom of movement of workers in the Union. It describes the ambition to eradicate discrimination on the basis of nationality, not only in recruitment and remuneration, but also in other working conditions and employment opportunities.</p>	<p>The quality, price and accessibility of public transport should not significantly differ if there is a border between the point of departure and the destination, ceteris paribus.</p>	<p>Effect of Fourth Railway Package on:</p> <ul style="list-style-type: none"> • The costs for the provision of cross-border connections • The search and organization costs for travellers who want to make use of cross-border connections, i.e. ticketing & scheduling.
<p><u>Euregional cohesion</u></p> <p>The provision of public transport by rail in border regions presupposes effective coordination between the competent net managers, officials and service providers.</p>	<p>The structures set up for the regulation of cross-border transport should be as simple and efficient as those regulating the national market.</p>	<p>Effect of Fourth Railway Package on:</p> <ul style="list-style-type: none"> • Number of independent actors involved in the coordination of the granting and organization of cross-border public transport. • The facilitation of the consultations between the actors concerned. Both horizontally (cross-border) and vertically (internal)

2. The cross-border governance structures

The effect of the Fourth Railway package on Euregional cohesion depends on two related factors. On the one hand, there is the effect of the railway package on the need for cross-border coordination, and on the other hand, there is the extent to which the regulations studied here provide for cross-border governance structures in order to meet this need. It is the ratio between both factors which is of importance to the impact measurement.

The organization of cross-border public transport implies cooperation between very different organizations with equally different backgrounds. The academic literature on international

cooperation and studies on political behaviour show that changes in policy become more difficult to achieve as the number of negotiation partners increases¹⁵ and their preferences are further apart.¹⁶ Applied to the railway market, and in particular cross-border public transport, we analyse the impact of the railway package on the relationships between the competent local and other authorities for the public service contract, the infrastructure managers operating the network on both sides of the border and the final service providers wanting to offer the transport. In brief, we assume that a greater fragmentation of actors, i.e. more autonomy, and a greater diversity in market structures will increase the need for consultation structures.

The existence of consultative structures in which the parties involved regularly meet can facilitate collaboration.¹⁷ The second pillar of the analysis studies both horizontal and vertical consultation structures. In this study, horizontal coordination is limited to the partnerships that exist between similar entities across borders. More specifically, this can pertain to consultations between the authorities with joint competence on the awarding of cross-border public transport or coordination between the infrastructure managers on both sides of the border. By contrast, the vertical coordination mechanisms are more aimed at improving the coordination between the various market players within a country. Prior to awarding a new connection, for example, coordination is required between potential service providers and the infrastructure manager. If these consultation mechanisms are open to foreign players as well, they can also be classified as diagonal. The second row of Table 1 concisely summarizes this framework.

3. Does the measure promote or impede European integration and what does that mean for the citizens of the border regions

The analysis consists of two sections. Primarily, the impact of the Fourth Railway Package on the profitability of cross-border routes will be studied. Secondly, the implications of the Fourth Railway Package for the search and transaction costs of cross-border travellers will be explored.

Profitability of cross-border passenger transport

The impact studies are reasonably in unison about the consequences of the technical pillar of the Fourth Railway Package. The approval of the reforms to the European Railway Agency and the further harmonization of the technical and safety standards would lead to a 20% reduction in the cost price for new market entrants, while reducing the time required to obtain the necessary certificates by 25%.¹⁸ The principal change to the original proposals of the Commission is the role that is still assigned to national safety authorities. Under the influence of the European Parliament and the Council, the Railway Agency became exclusively competent for cross-border operations,

¹⁵ Axelrod, R., & Keohane, R. O. (1985). Achieving Cooperation under Anarchy: Strategies and Institutions. *World Politics*, 38(1), 226–254.

¹⁶ Tsebelis, (2002) *Veto Players: How political institutions work*. Princeton: Princeton University Press

¹⁷ Duffy, J., & Ochs, J. (2009). Cooperative behavior and the frequency of social interaction. *Games and Economic Behavior*, 66(2), 785–812.

¹⁸ European Commission: Press release, European railways at a junction: the Commission adopts proposals for a fourth railway package, 30 January 2013, IP/13/65

where railway companies can still turn to the national safety authorities for strictly internal affairs.

The effect of this on the traditional railway undertaking is a reduction of the marginal cost for entering an additional market within the EU. The impact on cross-border transport is felt immediately, as it practically cuts in half the administrative burdens. The Fourth Railway Package retains the possibility for neighbouring countries to allow exceptions from the safety rules for cross-border transport. However, this requires the conclusion of an agreement between the two countries or at least between the provider of the one and the net manager of the other country (see below).

The reform of the management structures and the market forces should further decrease the cost of rail transport through increased competition in the market. The proposal of the European Commission initially contained strict rules with regard to the size of the concession areas, the granting of private contracts and the separation of the infrastructure manager and the railway undertakings. The original proposal was drastically rewritten under pressure from the Member States.¹⁹ As a result, the original quick scan for the Dutch market, for instance, still incorrectly assumed that only up to 30% of the rail net could be included in a single concession. This would have had great implications for the organization of the Dutch railways because the main network is being operated by the national railways, whereas the local lines are tendered publicly.²⁰ This requirement was alleviated after trilogue negotiations between the Council and the European Parliament. Many exceptions were also created in order to allow the private award of contracts, while the unbundling of the infrastructure manager of the (national) railway undertaking was partly reversed under German pressure.

As a consequence, the originally quantified effects no longer apply. Much will depend on the effective implementation of the legislation and the goodwill of the Member States in promoting competition. The positive effects on cross-border passenger rail transport will surely be more limited than originally expected, all the more so because it is unclear whether any change will occur in the ticket price for the connections covered by a public-service contract.²¹ If the public-service obligations also specify the frequency of the connections, the immediate benefits for citizens in the border regions becomes less easily discernible. These benefits are then, no doubt, rather to be found with the competent authority or the railway undertaking.

¹⁹ T. Berkeley, Germany rewrites the Fourth Railway Package, available online via <http://www.railjournal.com/index.php/blogs/tony-berkeley/germany-rewrites-the-fourth-railway-package.html>

²⁰ RebelGroup, GoudAppel, Movaris (2013) Quick scan impactanalyse van het Vierde Spoorwegpakket: De effecten voor Nederland. Studie voor het Ministerie van Infrastructuur en Milieu 25.10.2013 (Quick-Scan Impact Analysis of the Fourth Railway Package: The effects for the Netherlands. Study for the Ministry of Infrastructure and the Environment)

²¹ Ibid.

Service provision

Cross-border mobility can also be promoted through better service provision. Special attention will be given to the extent to which railway undertakings shall be deemed to take part in a joint system for the provision of information and integrated tickets. In the impact study ordered by the Commission, the possibility of introducing an EU-wide integrated ticket was discussed. Unfortunately, its potential benefits were not quantified in the final analysis.²²

The political discussion mainly concentrated on requiring the mandatory participation of railway companies in such integrated information and ticketing systems. The European Commission proposed to make this optional for the Member States, whereas the European Parliament and the Committee of the Regions wanted to make it mandatory. The impact study suggested that the contexts were very different across the Member States and would thus require a flexible approach, an opinion shared by the industry.²³

The Council proposed a sort of compromise, allowing the Member States freedom in introducing an obligation for railway undertakings but in which the Commission would continue to monitor the market and, if deemed necessary, would propose additional legislation if the service didn't improve. The Fourth Railway Package will not give a large boost to service provision in the border regions, even though the revision of the system planned at the end of 2022²⁴ does leave the necessary room for investigating whether or not a stronger framework is conceivable for developing an integrated ticketing system for cross-border connections.

From the perspective of the border regions, the effects of the Fourth Railway Package on European integration will be positive but also somewhat limited. The technical pillar will clearly produce benefits, although partly mitigated by the public service contracts, which include most of the cross-border connections. The effects of the political pillar will be less clear cut, given that the proposal has been greatly watered down and leaves a substantial amount of discretion to the Member States to come to a flexible interpretation.

4. Does the measure promote or impede Euregional cohesion and Euregional governance structures?

Two indicators were put forward in section 2.3 as relevant for the promotion of Euregional cohesion and Euregional governance structures: the need for coordination caused by the railway package and the extent to which the rules provide for the necessary consultation structures to handle the specific border issues.

²² SWD(2013)10 final part I: p49 & 92

²³ IUPT (2014) Fourth Railway package: Proposal on the governance of the railway infrastructure Common Information and Ticketing System. Position paper. Available online at: <http://www.uitp.org/sites/default/files/cck-focus-papers-files/UIPT%20position%20paper%20on%20Common%20infoticketing%20system%204th%20Railway%20Package.pdf>

²⁴ Council 11199/1/16: Article 1(8) [13a(2)]

1. The unbundling of market structures and complexity in coordination

The possible effects of the Fourth Railway Package on the need for emergency (cross-border) coordination are analysed via two components. On the one hand there is the number of actors involved in the organization of cross-border public transport; on the other hand there is the variety of market structures that need to be reconciled.

An analysis by the research department of the European Parliament places all Member States in three categories according to the prevailing market structure for passenger transport by rail. The three Member States whose respective territories together cover the Euregion Meuse-Rhine each fall into a different category.²⁵ The current structures in the selected border regions are shown in Table 2. Differences can be noted regarding the independence of the infrastructure manager, the use of public procurement and the competent authorities responsible for the public-service contracts. Germany is a special case because it is the only country that allows competition on long-distance railway connections, meaning that commercial services may be operated on the same line. However, competition has been limited since the national railway company (DB ICE) has a strong start position.²⁶ Critics attribute this to the entanglement of the net manager (DB Netz) and the railway company.²⁷

²⁵European Parliament Research Service (2016) The fourth railway package: Another step toward a Single European railway area. March 2016. pp. 10-11 Available online at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/579088/EPRS_IDA\(2016\)579088_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/579088/EPRS_IDA(2016)579088_EN.pdf)

²⁶Sylvain Séguret (2009) Is competition on track a real alternative to competitive tendering in the railway industry? Evidence from Germany. *Paper presented at the 11th Conference on competition and ownership in land passenger transport*

²⁷Kevin Smith, DB has unfair advantage in Germany – report. *International Railway Journal* Available online at <http://www.railjournal.com/index.php/policy/db-has-unfair-advantage-in-germany-report.html?channel=000>

Table 2: Market Structures in the Euregion Meuse-Rhine

	Netherlands	Belgium	Germany
Infrastructure Manager	Independent	Independent	Holding (integration)
Competition over/on railway lines	Over railway lines	Over railway lines	Over railway lines (local) On railway lines (long distance)
Award procedures	<ul style="list-style-type: none"> • Private • Public award 	<ul style="list-style-type: none"> • 100% private 	<ul style="list-style-type: none"> • Public award • Commercial
Competent authority for public procurement	<ul style="list-style-type: none"> • State Government • Regions (Local) 	Federal Government	Länder

In the original proposals of the Commission, the Fourth Railway Package sought to achieve a more profound division between net managers and service providers. In addition, public service provision was to be the rule and private award the exception. Wherever this would lead to a further division of powers, and therefore a greater need for (vertical) coordination, the multitude of market structures would be increasingly homogenised, thus facilitating cross-border cooperation.

The European Parliament and the Member States in the Council largely tore the original proposal to pieces, however. Under the influence of the Germans and the French the holding structure was kept intact.²⁸ At the same time, Member States such as Belgium attempted to allow private awarding.²⁹

In summary, the number of actors to be aligned by the rail package will only increase when Member States are involved where private awards are still the rule, i.e. Belgium, in our case. After all, this implies that the interests of the competent authority and the service provider will diverge further. Moreover, the diversity in the market systems adhered to will be maintained, adding further complexity to cross-border coordination.

2. Facilitation of cross-border consultation structures

The complexity in the award of cross-border public transport requires effective coordination between a multitude of actors. As stated previously, this can be accomplished by the strengthening of both horizontal and vertical consultation structures.

²⁸ Local competent authorities, such as the Verkehrsverbund Berlin-Brandenburg, were also strong proponents of this. Available online at <http://images.vbb.de/assets/downloads/file/19323.pdf>

²⁹ T. Berkeley, Germany rewrites the Fourth Railway Package, Available online at <http://www.railjournal.com/index.php/blogs/tony-berkeley/germany-rewrites-the-fourth-railway-package.html>

Horizontal consultation structures

The Fourth Railway Package addresses cross-border cooperation both in the political and the technical pillar. A crucial question for the political pillar is **how cross-border connections will be awarded**. In their opinion on the proposal of the Commission, the Committee of the Regions (CoR) and the European Parliament took to heart the border-regional interests. The CoR, for instance, proposes, among other things, a broader definition of local authorities so as to include cross-border cooperation. One option is to make use of the 'European grouping or Territorial Cooperation' here (CoR. General comment 10). These are cross-border legal entities recognised in European law, which could take on the award of cross-border public transport.³⁰ The European Parliament also recognised the problems of the border regions and the vacuum that the texts prepared create. In response, they too suggested broadening the definition of the competent local authority to include cross-border regions. This option was not supported by the Council, however. In its place we find an explicit recognition of the need for coordination in Recital 6 of the position of the Council. This dictates that the competent authorities on both sides of the border must work together in the procurement of cross-border public transport.³¹

This effectively represents a recognition of the current situation, which also leans on *ad hoc* consultations. The current concession for South Limburg, for instance, dictates that the future operator cooperate with the competent net managers and authorities of both countries on the operation of the border crossings, i.e. Maastricht-Visé and Heerlen-Herzogenrath. In other words, there is still no clear picture about how cross-border lines are to be awarded. Relying on mutual cooperation between service providers, public authorities and net managers has created a void, which may take vastly different forms, depending on the organization of the markets in the neighbouring Member States.

At the level of the net manager, cooperation will assume a more structural form. The original proposals of the Commission already mentioned the creation of a European network of network operators.³² Both the Council and the Parliament supported this initiative and even accelerated its implementation. The directive creates a consultation platform that brings together ALL European net managers and that it is also competent to deal with cross-border issues.³³ This should see its official start as early as 2019. It is encouraging that an informal precursor of this platform already exists under the name PRIME, which shows a strong cross-border perspective in its brochure 'the performing rail infrastructure manager'.³⁴ The intention is that this consultative body will help ensure better coordination of the schedules, design joint procedures to deal with network

³⁰ Committee of the Regions (2013) Opinion: The fourth railway package. 7-9 October 2013 CDR27-2013_00_00_TRA_AC

³¹ Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail- Adopted by the Council on 17 October 2016 Doc n° 11198/1/16 REV 1

³² 2013/0029(COD)

³³ See un 23 Art.53

³⁴ European Commission (2013)'The performing rail infrastructure manager.' DG MOVE Available online via http://ec.europa.eu/transport/infrastructure/tentec/tentec-portal/site/brochures_images/b2_2013_brochure_LOWRES.pdf consulted 18.10.2016

malfunctions, but also facilitate the promotion of cross-border investment in new infrastructure. The latter may also be of interest with a view to the promotion of European integration in the border regions (see previous section).

Much of the horizontal cooperation **on the technical pillar** will take place in the setting of the Railway Agency of the European Union. Coordination can be achieved through the Board of Directors, on which the Member States and the industry are represented (Art.47), but also via the networks of national agencies that will establish the Railway Agency (Art.38).³⁵ However, Member States may also work together directly to circumvent the regulatory barriers. According to Art. 10(9) of Directive 2016/798, an exception to the dual-certification requirement can be granted if the safety can be guaranteed by an agreement between the relevant Member States or if the Foreign service provider has reached an agreement with the infrastructure manager of the network utilised. While international agreements, such as the one about the Antwerp-Amsterdam connection, are an option for important international connections, such *ad-hoc* agreements are much less likely to be concluded to consolidate inter-urban border connections.

Vertical (and diagonal) consultation structures

In addition to cooperation between the border regions, the railway package provides for the establishment of a coordination committee for each network. The aim of these committees is to bring all the interested transport companies and the net manager together. Here too the Council has diluted the original ambitions of the Commission. The establishment of the committee is not mandatory. Its organisation shall be established on the initiative of the Member States, not the net manager. The Member States can optionally invite transport-user associations and competent authorities. Although this committee has no direct impact on cross-border cooperation, it does create a platform where transport companies and network administrators can align their interests and hence also facilitates horizontal coordination. The recommendations of the Committee of the Regions would also make diagonal alignment of interests possible, i.e. coordination between travellers or local/regional authorities on one side of the border and the net manager on the other side. After all, the Committee advocated the compulsory invitation of local, regional and national authorities to the coordination meetings, as well as the relevant transport-user associations. These recommendations were not followed.

In summary, the effects of the Fourth Railway Package on the cross-border managerial structures are not unambiguously positive or negative. The need for coordination will increase slightly over time due to the further division and the built-in flexibility. The package provides for horizontal consultation structures for the net managers but was significantly less ambitious in facilitating the cross-border award of public transport.

³⁵ Regulation 2016/796

5. Conclusions and avenues for further study

In general, it can be said that the fourth railway package will obviously have a positive impact on the border regions. The exploitation costs of cross-border transportation will definitely decrease, but whether the border population will benefit from this remains uncertain for two reasons: Firstly, the financial profits will be spread across all actors involved, i.e. the awarding government, net managers and railway companies. Secondly, eventual service provision will depend on the future award procedures for cross-border lines.

It is clear that the fourth railway package will not be an endpoint in the establishment of the unified railway market. If the deficiencies in the implementation of the previous packages and the long transition periods provided for in the current railway package are any indication, the market will be a volatile one over the coming twenty years. Member States will be awarding concessions less privately, which implies that the challenges with public service contracts in border regions will become a more frequent phenomenon.

Only then will it become clear whether the administrative tangles can be unravelled in practice without a further helping hand from the EU. In the meantime, a useful step towards anchoring this would be to catalogue the existing award procedures for all cross-border lines, along with the consultation structures used on them, the efficiency in terms of the award process, and the services ultimately provided under them. Cross-border impact assessments such as this one may prove useful in this process, but the regulator already has a number of instruments to automate the process.

The first railway package entrusted the Commission with the task of monitoring the correct implementation of the regulations and reporting on this.³⁶ This has so far resulted in four reports on the development of the railway market, the Rail Market Monitoring Schemes (RMMS). The recasting of the directive in 2012 and the ensuing implementation regulation extended the reporting obligation of the Member States by a questionnaire to be filled in annually.³⁷ This questionnaire already collects a number of statistics regarding cross-border passenger transport, e.g. punctuality, passenger kilometres, number of lines awarded. Currently there is only one question about cross-border transport through a public service obligation: service volumes and compensations. No questions are asked about the agreements drawn up with the partners across the borders. In accordance with the implementation regulation, it should be possible to expand this questionnaire in the future. In principle, this instrument can contribute to mapping the efficiency of cross-border public transport.

The network of infrastructure managers also has the task of studying the various networks and their management from a comparative perspective. Although the first developments at informal precursor PRIME seem hopeful, the focus of their task is currently on commercial cross-border

³⁶ Directive 2001/12/EC, Section V bis

³⁷ Implementing Regulation 2015/1100, Annex

connections, e.g. the TEN-T project, and on the realisation of cross-border infrastructure rather than on inter-urban, cross-border public transport.

The effects of the railway package on cross-border public transport are thus open to interpretation. More straightforwardly put, it may be concluded that the railway package contains a number of missed opportunities from the point of view of border regions. The recommendations of the Committee of the Regions, the scenarios of the impact analysis and the contributions of interest groups led to numerous suggestions that address the specific problems of the border regions. Many of these recommendations ultimately did not make it into the final legislation. Further study of the reasons not to incorporate these seemingly innocent suggestions would be useful.



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