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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

Third report on monitoring development of the rail market

(Text with EEA relevance)

{SWD(2012) 246 final}

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I. INTRODUCTION

1. The European railways have experienced major changes over recent years, connected both to a generally unfavourable economic situation and the development of the regulatory framework, particularly at European level.
2. The objective of establishing a single European railway area based on open competition has been set out on several occasions: the 2011 White Paper 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system', the Communication 'Action for Stability, Growth and Jobs' adopted on 30 May 2012 (which emphasises the importance of reducing administrative burdens and barriers to entry), the conclusions of the January 2012 European Council and in the Communication 'Better Governance for the Single Market'. This process supports the objectives of the Europe 2020 strategy by means of its contribution to economic growth and job creation.
3. In this context, the Commission proposed a recast of the first railway package, on which political agreement was reached on 3 July 2012, while the impact of the opening-up to competition of the international passenger transport market with effect from 1 January 2012 was starting to be felt.
4. These constant changes to the regulatory framework prompted the legislator to decide to ask the Commission to monitor developments in the European rail market on a regular basis, so as to assess the impact of Community policy on the rail market, and also to make it easier to define the measures which need to be adopted and implemented in the future with regard to the rail sector.
5. This report therefore meets the obligation to monitor the European rail market, as required under Directive 2001/12/EC¹.
6. The Communication on monitoring development of the rail market², adopted on 18 October 2007, followed by the report³ of the same name of 18 December 2009, were also prepared to this end. This report does not just update these documents, but also contains specific new information on subjects not discussed in the previous ones.

II. RAIL MARKET MONITORING SCHEME

7. The Commission has set up a Rail Market Monitoring Scheme (RMMS) in order to meet the requirements as regards the monitoring of the market.

¹ Section Va of Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 (OJ L 75, 15.3.2001) amending Council Directive 91/440/EEC on the development of the Community's railways.

² Communication from the Commission to the Council and the European Parliament on monitoring development of the rail market of 18 October 2007 (COM(2007) 609).

³ Report from the Commission to the Council and the European Parliament on monitoring development of the rail market COM(2009)676 as amended by the corrigendum of 8 December 2010.

8. The Commission is assisted in its monitoring tasks by a working group formed of experts from national ministries and the rail sector, including social partners. Between 2001 and the end of 2011, the RMMS working group met on 25 occasions, with three of its meetings taking place since the adoption of the previous report.
9. The analysis contained in this report is based on the RMMS group's work, and in particular on the results of the questionnaire, but also on recent studies and from statistics from the European Commission, specifically Eurostat. For the purposes of this analysis, the concept of Member States includes Norway, which also completed to the questionnaire.

III. IMPLEMENTATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

10. All Member States with rail networks have transposed the Directives contained in the first railway package. However, incorrect transposition, to varying degrees and with regard to sometimes different aspects, has resulted in the Commission initiating infringement proceedings against most Member States since 2008. The proceedings have reached different stages depending on the country and the type of situation. At the end of 2011, cases were pending in respect of 12 countries before the Court of Justice. Recurrent objections relate to the independence of essential functions, infrastructure charging and the independence of the regulatory body.
11. In addition, the Commission has proposed⁴ a recast of the first railway package; in terms of form, this involves simplifying the regulatory framework in the rail sector by merging, harmonising, clarifying and updating the three Directives mentioned above in one text. In terms of content, three objectives are pursued: ensuring adequate financing and charging for railway infrastructure, guaranteeing fair competitive conditions for operators and reinforcing the effectiveness of supervisory bodies.
12. With regard to the second railway package, the national institutions required have been set up. The Commission is currently assessing the transposition of the Safety Directive⁵, with its work due to be completed by mid-2013.
13. With regard to the third railway package, the deadline for transposition of Directives 2008/57/EC⁶ and 2009/131/EC⁷ was 19 July 2010, while the deadline for Directive 2011/18/EU⁸ was set at 31 December 2011. For Directive 2007/58/EC⁹, the deadline

⁴ Communication from the Commission concerning the development of a Single European Railway Area COM(2010) 474 final of 17 September 2010.

⁵ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

⁶ Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community.

⁷ Commission Directive 2009/131/EC of 16 October 2009 amending Annex VII to Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community.

⁸ Commission Directive 2011/18/EU of 1 March 2011 amending Annexes II, V and VI to Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community.

⁹ Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

for transposition was 4 June 2009 and the deadline for full implementation 1 January 2010.

14. In addition, the Commission announced several new rail transport initiatives in its White Paper in March 2011:¹⁰ it intends to propose a 'fourth railway package' with the objective of opening up domestic passenger transport to competition, improving access to infrastructure and associated services, as well as extending the European Railway Agency's tasks in the area of certification.
15. The regulation on freight corridors¹¹ provides for the establishment of six corridors by 10 November 2013 and three others by 10 November 2015. Member States must set up an Executive Board for each corridor responsible for supervising the extensive implementation work by the Management Board, composed of the relevant infrastructure managers. Most corridors have already set up their Executive Boards. These freight corridors will constitute the backbone of the TEN-T multimodal corridors.
16. Lastly, the recast of the directives of the first railway package has enabled developments in the areas of regulatory supervision, infrastructure financing and charging and market access conditions. A formal network of regulatory bodies will be created for coordination and exchange of best practice, together with a clause stipulating a review in 2014.

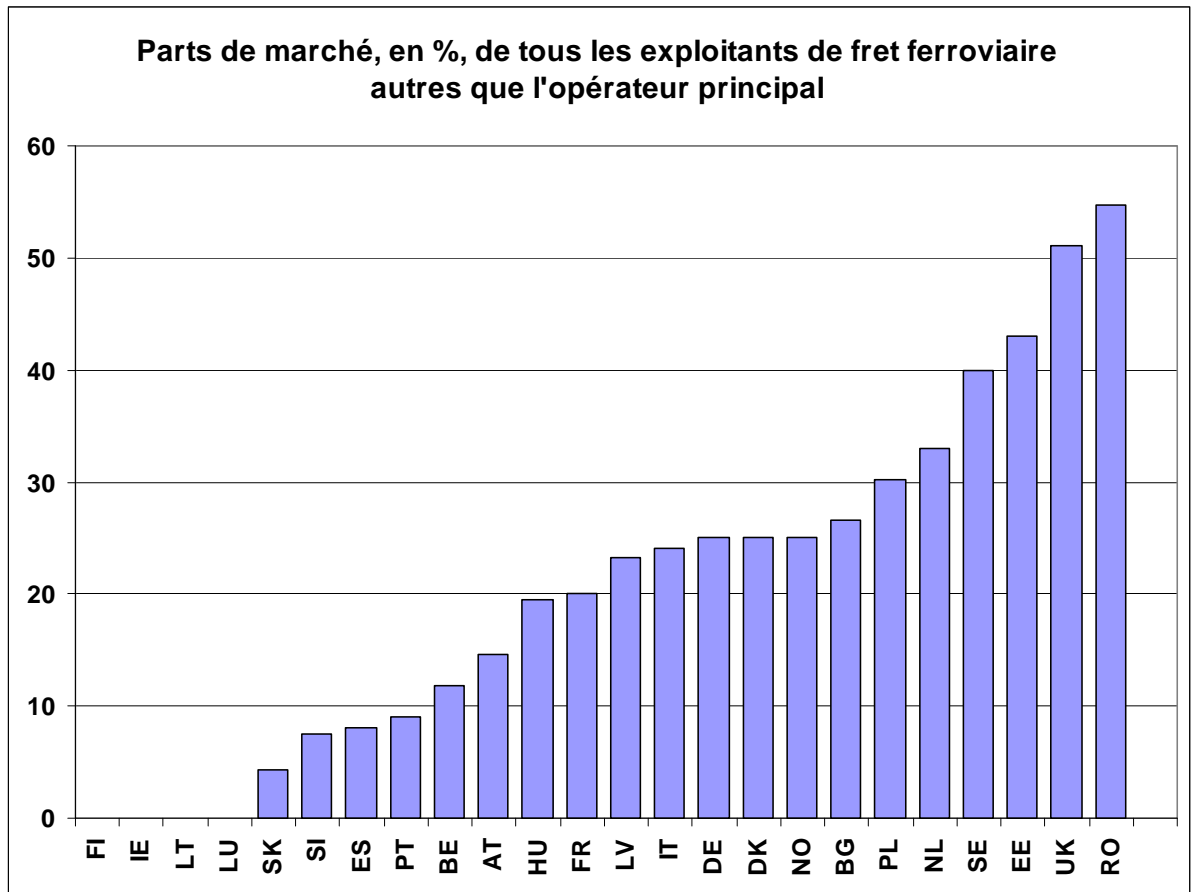
IV. OPENING-UP OF THE RAIL MARKET

17. At the end of 2010, there were almost 700 European rail operating licences in the freight sector, including 340 in Germany and 72 in Poland. The number of licences in the passenger sector now exceeds 500, including 320 in Germany and 44 in the United Kingdom. At EU level, the number of licences has therefore increased by nearly 16% for the freight sector and 11% for the passenger sector in two years. It should be noted that these figures do not include national licences, significant numbers of which are still issued by some Member States (undertakings which provide exclusively regional rail freight services may hold national licences only).
18. With regard to freight services, in tonne-kilometre terms, undertakings other than the largest operator hold the largest market shares in Romania (55%), the United Kingdom (51%) and Estonia (43%), as shown in figure 1. Over two years during the crisis, the market share of non-incumbent operators increased significantly in several Member States (from 10% to 23% in Latvia, from 14 to 27% in Belgium and from 10 to 20% in France), while it remained zero or close to zero in Finland, Ireland, Lithuania and Luxembourg.

Figure 1: Total market shares (expressed as a percentage of traffic in tonne-kilometres) of rail freight operators other than the main operator at the end of 2010

¹⁰ White Paper of 28 March 2011: 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' COM(2011) 144 final.

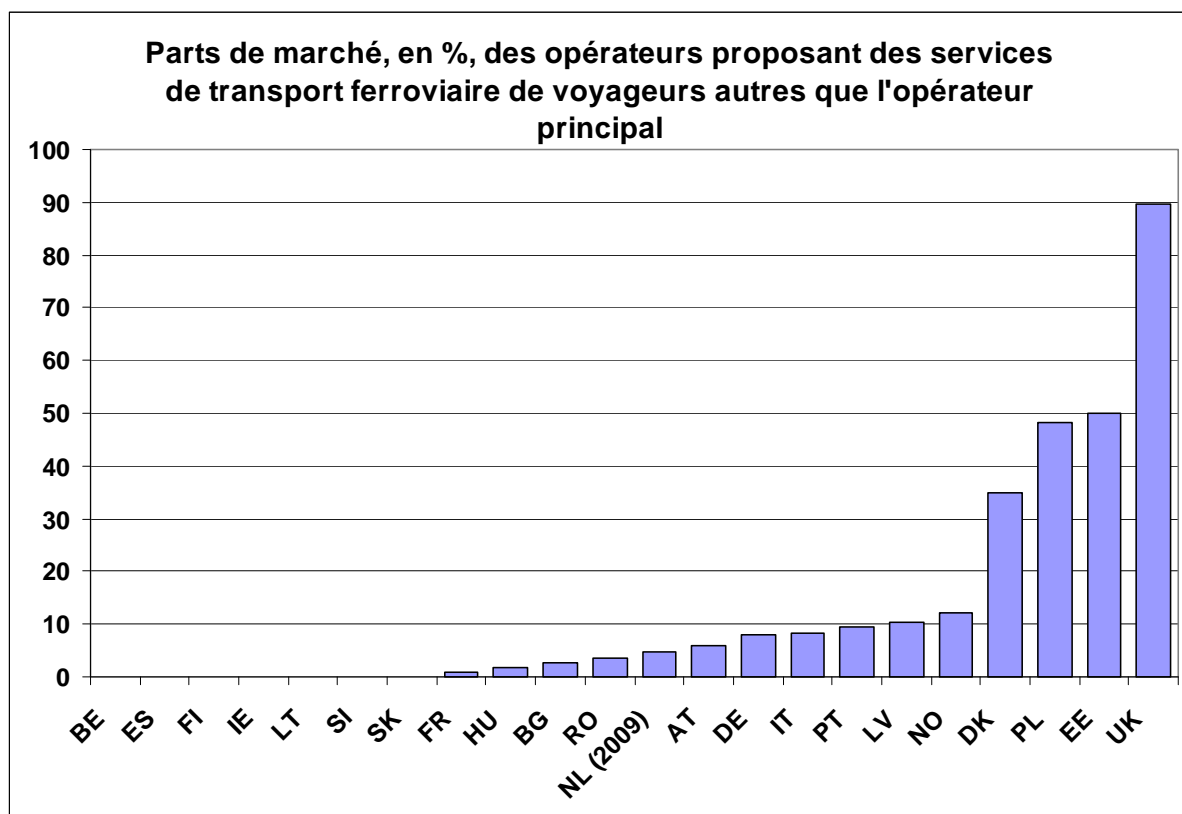
¹¹ Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight.



Source: RMMS questionnaire completed by Member States in May-June 2011

19. In the case of passenger transport, new entrants have particularly high market shares in the United Kingdom (90%), Estonia (50%) and Poland (48%), while countries where the incumbent operator still controls the whole of the market are now in a minority (Belgium, Greece, Spain, Finland, Ireland, Lithuania, Slovenia and Slovakia). However, in some Member States such as Poland, new operators are the result of the partial break-up of the incumbent operator and hold de facto monopolies in their respective regions.

Figure 2: Total market shares (expressed as a percentage of traffic in passenger-kilometres) of operators of rail passenger transport services other than the main operator at the end of 2010



Source: RMMS questionnaire completed by Member States in May-June 2011

20. This situation is largely due to the fact that the opening up of the domestic rail passenger transport market occurred at a more or less early stage in the different Member States: from 1992 in Sweden, in 1994 in Germany, in 1995 in the United Kingdom, then in Denmark and in Italy, and subsequently in a further ten EU countries.
21. As regards international passenger transport, which was opened up to competition by European legislation on 1 January 2010, alliances between incumbent operators remains the most common operating mode. However, services are gradually appearing on several routes which are in competition with the services provided by the incumbent operator of one of the countries served. This is the case, for example, of Deutsche Bahn and ÖBB which are working with the Italian company FNM on the Munich-Bologna route. Similarly, Trenitalia and Veolia Transdev are now operating services on the Paris-Venice route. Westbahn GmbH has opened a line from Vienna to Salzburg and Freilassing. Deutsche Bahn could also be operating independent services from Germany to London or Paris in the relatively near future. Lastly, with regard to cross-border regional services, a multiplication of new services can be observed, some of which are operated by incumbent operators and others by new entrants, as demonstrated by a Commission study¹².

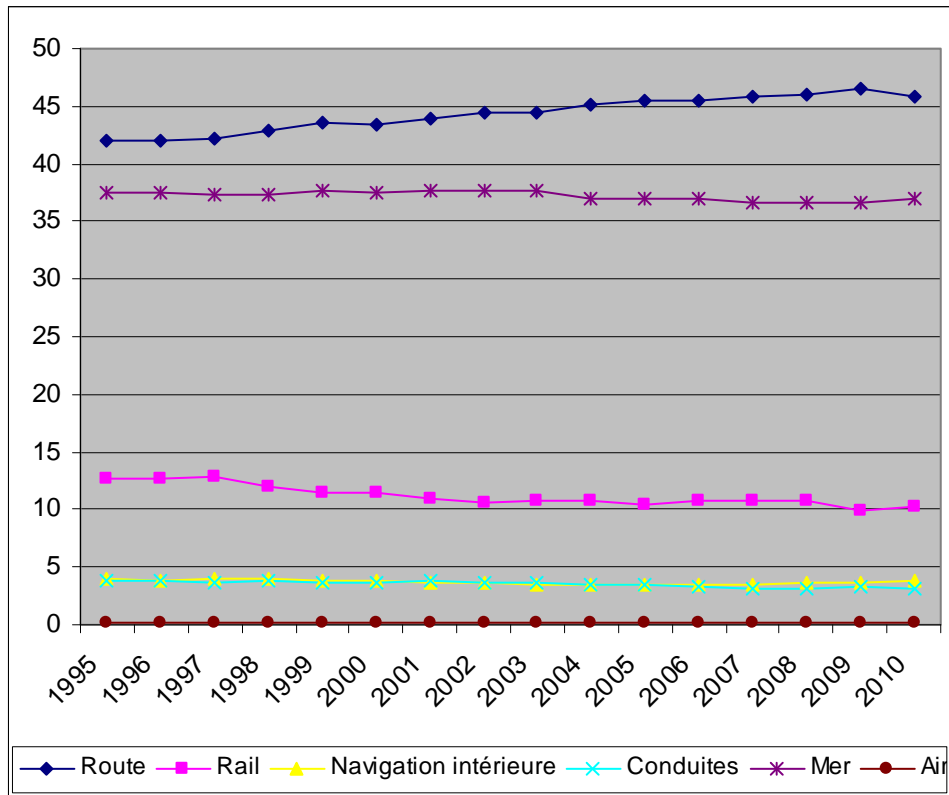
¹² Situation and perspectives of the rail market, March 2010.

V. OPERATION OF THE EU RAIL TRANSPORT MARKET¹³

V.1 The position of rail transport compared to other modes

22. While the rail sector's share of overall freight transport had experienced a steep decline over previous decades, its market share has remained slightly above 11% for a decade, nevertheless with only 10.2% in 2010 in a crisis context.
23. The rail sector's share in land freight transport, which had stabilised since 2002 at 17.1 %, whereas in 1995 it still had a 20.2 % share, fell in 2010 to 16.2%.

Figure 3: Rail share in freight transport (EU-27, 1995-2010)

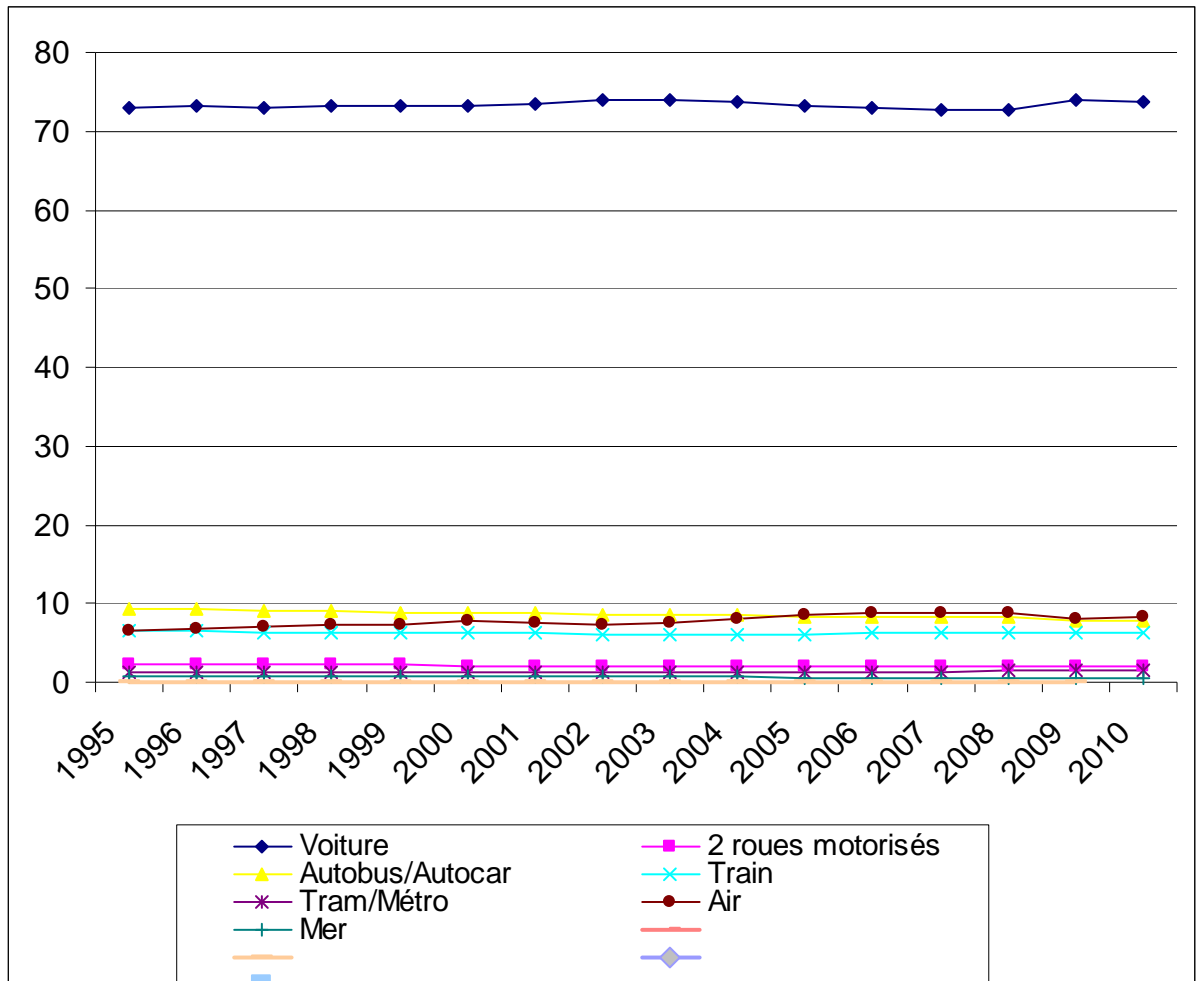


Source: EU transport in figures, Statistical Pocketbook 2012

24. In the case of passenger transport, the rail sector's share of the passenger transport market in the EU-27 has increased slightly over recent years, rising from 5.9% in 2004 to 6.3% in 2010. However, considerable differences remain between the Member States with railway networks, as this share accounted for some 10% or more in Hungary and in Austria, but scarcely 2% in Estonia and a little more than 1% in Greece.

Figure 4: Rail share in passenger transport (EU-27, 1995-2010)

¹³ As Cyprus and Malta do not have railway networks, all references to EU-12 or EU-27 countries should be understood as not including these two countries.



Source: EU transport in figures, Statistical Pocketbook 2012

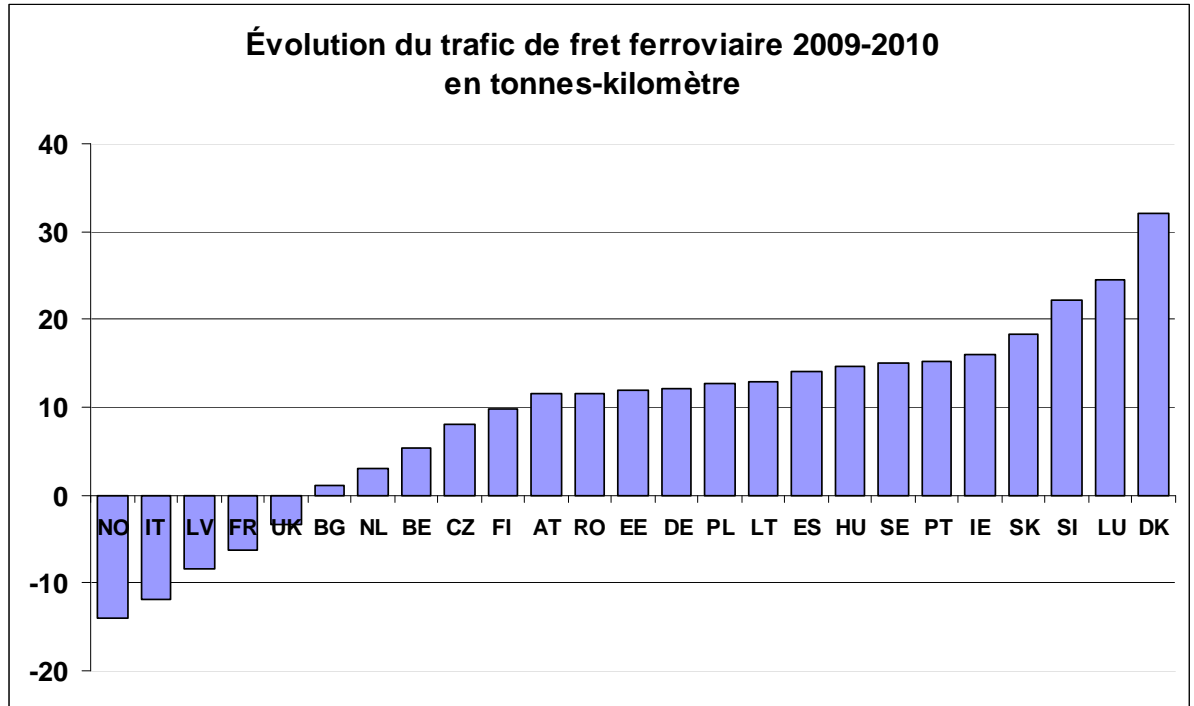
V.2 Trends in rail transport volumes and performance¹⁴

a) Freight transport

25. The crisis resulted in an 18.3% drop in freight transport in tonne-kilometres in the EU-27 in 2009. The rebound in the sectors which had been most affected, in particular the steel, chemical and car industries, resulted in a marked inverse trend in 2010, as no fewer than 15 Member States recorded increases of more than 10%, though without returning to 2008 levels at this stage. According to figures provided by the CER (Community of European Railways), the performance of rail freight in the third quarter of 2011 remained 9.2% lower than that of the third quarter of 2008 across the whole of Europe.

¹⁴ Rail transport performance means rail transport expressed in tonne-kilometres or passenger-kilometres.

Figure 5: Development of rail freight traffic 2009-2010 in tonne-kilometres



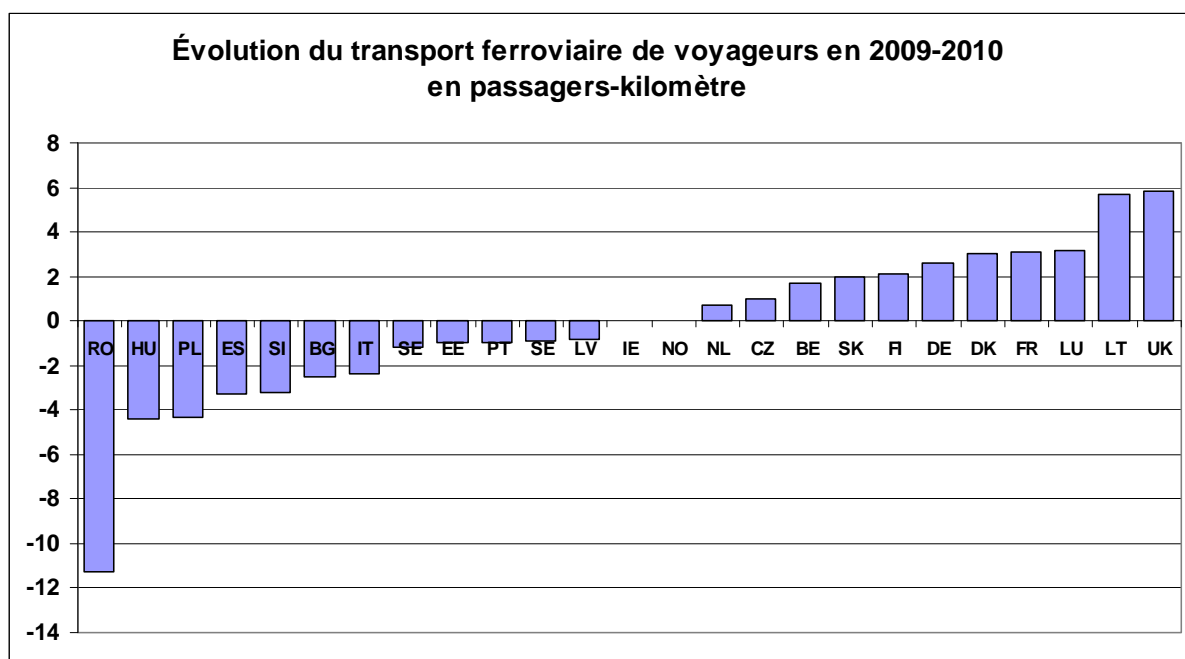
Source: RMMS questionnaire completed by Member States in May-June 2011

b) Passenger transport

26. Passenger transport was relatively unaffected by the crisis, as the decrease in traffic levels in passenger-kilometres was 1.4% for the EU-27 in 2009, where the increase of 3.6% in the EU-15 was not sufficient to offset the decrease of 8.3% in the EU-12 countries.

Developments in 2010 were mixed, with a less favourable situation again in the EU-12 (-11.3% in Romania) than in the EU-15, with the highest increase in the United Kingdom (+5.8%).

Figure 6: Development of rail passenger transport in 2009/2010 in passenger-kilometres



Source: RMMS questionnaire completed by Member States in May-June 2011

VI. PERFORMANCE OF RAILWAY UNDERTAKINGS

a) Employment

27. At the end of 2010, the number of staff employed by undertakings responsible for the commercial operation of rail transport services and the management of infrastructure was 110 000 in France, 80 000 in Germany and 64 000 in Poland (Annex 6). However, since the scope of activity of these undertakings varies from one State to another, comparison remains difficult. Similarly, the decrease in the sector's workforce over the last decade is difficult to quantify precisely.
28. The proportion of people over 50 among the active population employed in land transport accounted for 31% in 2010 compared to an average of 27% across all sectors. The sector is also characterised by an early average retirement age (55 years) and a low proportion of women in the overall workforce (14%).

b) Railway supply industry

29. According to a study by UNIFE (Association of the European Rail Industry)¹⁵, the railway market worldwide was estimated at more than EUR 120 billion in 2007 and is forecast to reach EUR 154 billion by 2016. The highest growth rates are expected in the Asia-Pacific region and in the countries of the Community of Independent States.
30. In addition, the CER (Community of European Railways) reports that a major renewal of railway rolling stock for passenger transport is in progress in the Czech Republic, Slovakia and Slovenia.

¹⁵ Worldwide Rail Market Study – Status Quo & Outlook 2016

c) Quality of service and passenger satisfaction

31. The quality of rail freight services in the European Union remains difficult to measure as a result of a general lack of indicators. Nevertheless, the gradual implementation of performance monitoring of rail freight services on the different freight corridors should provide some information on service punctuality.
32. Pursuant to Regulation 1371/2007¹⁶, rail operators subject to that Regulation are required to publish an annual report on the quality of services provided and punctuality of passenger services in particular.
33. In addition, a study carried out for the Commission (Annex 15) found that passengers are generally satisfied with security on board trains, journey times forecast and comfort levels in passenger coaches; however, they tend to consider that improvements could be made to train cleanliness and maintenance, punctuality and the quality of information provided, particularly when services are delayed. Punctuality appears satisfactory in a significant number of Member States, but is considered insufficient by more than 40% of those surveyed in Poland, Germany, Sweden, Romania and France.
34. Passengers also consider that particular attention should be paid in stations to car parks, the quality of facilities and cleanliness and maintenance. On the other hand, passengers are generally satisfied with ticket distribution, information and security. The level of satisfaction with regard to stations varies considerably from one country to the next; it is very high in Spain and Luxembourg, but remains low in Poland and Hungary.

d) Public service obligations

35. It is considered that 90% of the domestic rail passenger market is covered by public service obligations¹⁷. In the EU-15 countries, most public service contracts are signed for a minimum duration of between two and ten years; in the EU-12, whereas the duration of most contracts was not more than one year in 2005, the proportion of long term contracts has increased, with a beneficial impact on investment.
36. Compensation expressed as a percentage of the difference between expenditure and revenue from ticket sales did not exceed 71% in the EU-12 countries in 2009, compared to 94% in the EU-15; these figures represent a 4 point decrease in relation to 2007 in a context of extensive budgetary restrictions (Annex 11).

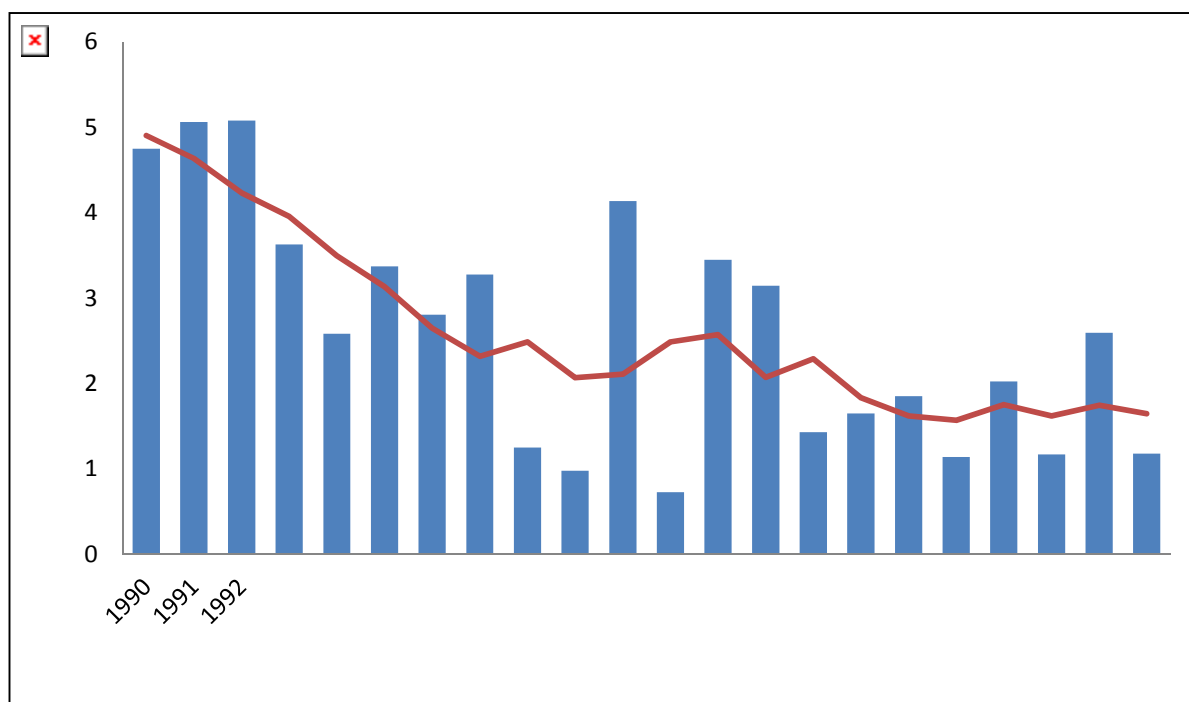
e) Safety

37. According to the European Railway Agency's report (Annex 16), 188 train passengers were victims of fatal accidents between 2008 and 2010, out of a total of 4 120 victims over the same period. 60% of the fatalities involved people who were on tracks in prohibited areas.
38. The overall level of safety in Europe, measured in terms of the number of fatal accidents per billion train-kilometres, has continued to improve since 1990, albeit at a slower rate since 2004, as shown in figure 7.

¹⁶ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

¹⁷ Public service rail transport in the European Union: an overview (November 2011)

Figure 7: Fatal train collisions and derailments per billion train-kilometres



Source: European Railway Agency 2012 Safety Performance Report

VII. RAIL TRANSPORT INFRASTRUCTURE

a) Network lengths

39. The EU has a total of approximately 212 000 km of railway lines, a level which has been relatively stable for a number of years. In some Member States which are experiencing particularly difficult budgetary situations, closures are affecting not lines but tracks, especially in Greece, Romania and Portugal, primarily because the networks are oversized.
40. The European high speed network, however, has continued to grow, reaching 6 600 kilometres in 2010, corresponding to a two-fold increase in eight years. Spain now has the biggest network ahead of France (Annex 8).

b) Trends in infrastructure investment

41. According to ITF (International Transport Forum), the share of investment in land transport infrastructure has remained stable at 0.8% in western Europe over the last decade, while it increased in central and eastern European countries, reaching 2% in 2009. The rail sector's share of that investment varies extensively, however, from one country to the next: in 2009 it stood at 65% in Austria, 55% in the United Kingdom, 52% in Luxembourg, 45% in Sweden and 41% in Belgium, and 32% on average in western Europe; in central and eastern European countries, however, the rail sector's share dropped sharply from 22% in 2000 to 13% in 2009 (Annex 9).

c) Charges and multi-annual contracts

42. The level of network access charges varies very significantly from one infrastructure manager to the next; for a 1 000 tonne freight train, the price in euros per train-kilometre ranged from 0.1 in Spain and 0.5 in Sweden to 10.2 in Slovakia and 9.8 in Ireland (Annex 10). Nevertheless, it would appear that these differences are set to decrease, as several EU-12 countries where charges are usually high have announced

or even embarked on a reduction of their tariffs. It should be noted that charges may also vary significantly within one national network depending on the lines or time slots involved.

43. The Commission considers that multi-annual contracts between infrastructure managers and railway undertakings are conducive to ensuring a good level of service and the requisite financial balance. Multi-annual contracts have been signed in some fifteen Member States (Annex 12).

d) Deployment of ERTMS

44. The introduction of ERTMS (European Railway Traffic Management System) is a significant step towards ensuring greater interoperability. At the end of 2011, more than 4 000 kilometres of lines were in service with ERTMS in the EU, an increase of more than 20% compared to the previous year. Moreover, more than 4 000 kilometres of lines are currently being fitted and are scheduled to enter into service by the end of 2013.
45. The European Deployment Plan adopted on 22 July 2009 sets out the requirement for key axes to be equipped by 2015. Before the end of 2012, Member States must notify a detailed timetable setting out the dates of calls for tenders and the main steps in the completion of the project to enable installation of ERTMS by 2015. The Commission will be monitoring compliance with this obligation closely.

VIII. CONCLUSIONS

46. The 2009 economic crisis has had a significant impact on rail freight traffic. Despite a significant rebound, 2010 levels have remained some 15% below those recorded in 2008 in most Member States; the decline has even continued in France and Italy. At EU level, it nevertheless appears that the rail sector's modal share is now comparable with pre-crisis levels.
47. The effects of the crisis have been much less pronounced for rail passenger transport. The increase in traffic observed in most EU-15 countries has continued; the decline which started in the 1990s in the EU-12 countries has nevertheless continued in 2010. In this context, there is a clear correlation between the recent development of traffic observed in each of the Member States and passenger satisfaction levels as expressed in the survey carried out for the Commission, as borne out, for example, by the positive results in the United Kingdom and Lithuania.
48. The opening-up of the market gathered pace in the rail freight sector during the crisis, albeit at a varying speed from one Member State to the next. In addition, some incumbent operators now have significant market shares in other European countries as a result of subsidiary undertakings operating locally. The crisis has not generally slowed down the progress of new entrants on different national markets. It is important to note in this context that increasing the number of competitor operators has not had a detrimental impact on the high level of safety of this transport mode.
49. The effective opening up to competition of the passenger market is taking place gradually, but now involves a majority of Member States. The railway market monitoring process will be complemented in the short term by the publication of a Eurobarometer study on the opening-up of the domestic rail passenger market, currently being carried out for the Commission. The results of the study will be taken into account in the preparation of the future legislative proposal on the opening-up of the domestic rail passenger market.