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REPLY OF THE COMMISSION TO THE SPECIAL REPORT

**"IMPROVING TRANSPORT PERFORMANCE ON TRANS-EUROPEAN RAIL AXES:
HAVE EU RAIL INFRASTRUCTURE INVESTMENTS BEEN EFFECTIVE?"**

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"IMPROVING TRANSPORT PERFORMANCE ON TRANS-EUROPEAN RAIL AXES: HAVE EU RAIL INFRASTRUCTURE INVESTMENTS BEEN EFFECTIVE?"

EXECUTIVE SUMMARY

II. first indent. The Commission agrees that the definition of the Priority Projects has not been based on an analysis of the actual and anticipated traffic flows. It is important to note, however, that while such studies have been carried out, both for individual projects and the network, they have yet to lead to conclusive results and so could not be used as such.

The Commission considers that providing a definitive description of the main trans-European rail axes is likely to be particularly difficult, as they are in a constant state of flux depending on migration, trade patterns and the geopolitical context. The Commission, however, also shares the view that the definition of the main network should be based on objective criteria. Therefore, in the future, Priority Projects should continue to be based on political agreement between the Council and European Parliament, but relying even more on the best available evidence.

II. second indent. The Commission welcomes the Court's recognition of the improvements flowing from the concentration of TEN-T co-financing at cross-border locations and the work of the Coordinators. It agrees that further work on defining a bottleneck is needed and will work on this.

The Commission considers that the procedures for approving projects are sound, particularly following their substantial overhaul for the 2007-2013 programming period. These procedures were substantially strengthened by the integration of the Cohesion Fund in programming and specific measures to improve project preparation, documentation and the quality of Commission appraisals.

II. third indent. The Commission welcomes this positive assessment of what the TEN-T and Cohesion co-financed projects have delivered. It would emphasise that, as the Court states in its paragraph 47, cost escalations do not have an impact on the EU budget because the EU's contribution is fixed at the beginning of the project.

II. fourth indent. The Commission shares the Court's analysis of the measurable improvements on lines dedicated to high-speed passenger services. It is working to improve the situation on conventional mixed and freight lines.

III. first indent. The Commission already has close contacts with the Member States and the Railway Institutions. It will continue to work closely with them. In addition, as part of its ongoing stakeholder consultation exercise on the TEN-T guidelines, the Commission is looking for input on how trans-European corridors for which there is significant actual or anticipated demand can best be delivered.

III. second indent. The Commission agrees that the Coordinators play a vital role and it appointed three new ones on 8 June 2010, bringing their number to nine.

The Commission agrees that further work on defining a bottleneck is needed and will continue to work on this. The European coordinators have analysed the bottlenecks on the Priority Projects for which they are responsible. The Commission has also reported on the bottlenecks in its yearly reports.

III. third indent. The Commission considers that the procedures for approving projects under the Cohesion Policy for the 2007-2013 programming period are sound. The Commission continues to work on their improvement and is investing significant resources to contribute to the improvement of project preparation.

The Commission welcomes the Court's recognition of the improvements made to TEN-T selection procedures; however, it accepts that there is room for improvement as regards the use of cost-benefit analysis. The TEN-T Executive Agency is working to develop this further; nevertheless, given that TEN-T financing only co-funds a limited amount of each project compared to that funded by Member States, it is logical that the onus for assessing costs and benefits should fall on them, particularly as almost all data and assumptions originate from them.

III. fourth indent. The Commission recognises the importance of exchanges of information amongst project promoters. The TEN-T Executive Agency will facilitate this by organising discussions at its regular workshops with current and potential beneficiaries on best practices and knowledge exchange between all project promoters, particularly in the rail sector.

III. fifth indent. By adopting Technical Specifications for Interoperability the Commission has worked, and will continue to work, on these "practical constraints". The European Coordinators also devote particular efforts to these issues.

INTRODUCTION

11, footnote 6. When presenting figures related to investments in its documents the Commission bases itself on the information provided by Member States. Recognising that the quality of the financial data would benefit from improvement, the Commission invested significant efforts which resulted in the information in the Commission's June 2010 report being significantly better than in previous reports.

14. The Commission underlines that, prior to 2007, Cohesion Fund projects were adopted on a project-by-project basis and in line with the available budget credits. The legal basis for the Priority Projects only applied after 2004.

OBSERVATIONS

22. The Commission understands that the Court means by stating that "the Priority Projects do not represent definitive descriptions of the main trans-European rail axes" that there needs to be general agreement on what are the main axes, and that this agreement should remain as stable as possible over time.

The Commission considers that it is likely to be particularly difficult to provide a definitive description of the main trans-European rail axes, as they are in a constant state of flux as a function of migration, trade patterns and the geopolitical context. The Commission, however, also shares the view that the definition of the main network should be based on objective criteria. Therefore, in the future, Priority Projects should continue to be based on political agreement between the Council and European Parliament, but relying even more on the best available evidence.

22. third indent. While the Commission acknowledges that connections to some important sea ports are not included in the Priority Projects, it would underline that many are. On 4 May 2010, as part of its TEN-T revision process, it put forward a working document that establishes the methodology for identifying a future TEN-T network. This should avoid any future occurrence of the situation described by the Court.

Box 4

The Commission acknowledges that the ERTMS corridors do not 100% coincide with Priority Projects. ERTMS has requirements that need to be met for both infrastructure and rolling stock. The TEN-T revision process is designed to tackle this, and one possibility being considered is to include ERTMS corridors directly into the Priority Projects.

The Commission understands that the Polish authorities will submit an application for funding for the part of the Polish north-south axis from Warsaw to Gdynia in late 2010, that this will include ERTMS and that it will have an indicative total cost of 386 million euro.

23. The Commission agrees that there is scope for improving the definition of Priority Projects. This is something that is being addressed through the TEN-T revision process.

24. The Commission agrees that the definition of the Priority Projects has not been based on an analysis of the actual and anticipated traffic flows. It is important to note, however, that while such studies have been carried out both for individual projects and the network, they have yet to lead to conclusive results and so could not be used as they stood.

As the Court has stated, the Commission acknowledges the need to review the TEN-T policy. This review is currently being carried out and includes an examination of the methodology for defining the future TEN-T network.

29. The Commission considers that EU financing has had a significant influence on all the TEN-T sections reviewed by the Court for this audit. This has included improving the projects originally planned or reducing their risk.

30. The Commission considers that, in countries covered by the Cohesion Fund, many rail projects would simply not go ahead without the substantial EU co-financing from the Cohesion Fund or the ERDF including cross-border sections, thereby improving accessibility and performance for all users. The requirement is to give priority to technically and economically mature projects that are feasible within the programming period; otherwise the Funds may be lost to the beneficiaries.

The definition of major projects in Article 39 of Regulation (EC) No 1083/2006 has been amended to make it easier for the Member States to submit major cross-border projects.

33. The Commission agrees that further work on defining a bottleneck is needed and will continue to work on this. The European coordinators have analysed the bottlenecks on the Priority Projects they are responsible for. The Commission also reported on the bottlenecks in its yearly reports.

34. The Commission for the 2007-2013 period improved its approval procedures for major projects co-funded by the ERDF and the Cohesion Fund. Large projects co-financed under the Cohesion Fund in the 2000-2006 period were often approved section by section for budgetary reasons. In this sense the quality of the preparation of individual sections may not reflect the quality of preparation and development of the overall axis.

35. Internal consultation of the relevant Commission services ("inter-service consultation") has been and still is a crucial element in the appraisal and approval process.

In the 2007-2013 programming period the Commission has established JASPERS, which provides technical assistance to the new Member States in order to contribute to the improvement of quality of projects at an early stage. It also has a contract with outside experts for technical advice in the appraisal of major projects.

Under shared management, the project promoter is responsible for adequately defining the technical specifications of projects. The adoption of technical specifications (see annex I) makes a significant contribution to improving the technical quality of rail infrastructure. The

Madrid-Levante project was approved in stages, section-by-section, for budgetary reasons, and not in its totality, as the network involves a total of 940 km of high-speed rail. The EIB was consulted and its recommendations were progressively taken on board in this project. The EIB considered the financing of this projects justified and itself is providing substantial loans for it, in addition to the Cohesion Fund support.

The Commission disagrees with the implication that subsequent cost escalations were all linked to the EIB's concerns. It considers that as explained in reply to 46 other factors were responsible.

37.first indent. The Commission would like to emphasise that external experts are at the heart of the TEN-T project selection process. There is also an external observer who provides comprehensive feedback to the TEN-T Executive Agency on the whole external evaluation process.

38. While the Commission welcomes the Court's recognition of the improvements made to selection procedures, it accepts that there is room for improvement as regards the use of cost-benefit analysis. In the future, the TEN-T Executive Agency will develop a more systematic approach to cost-benefit analysis taking into account existing work. In order to do this it will work with the projects selected in priority 3 of the 2010 annual call to improve project preparation, including by developing consistent approaches to cost-benefit analysis.

Nevertheless, given that TEN-T financing only co-funds a limited amount of each project when compared to that funded by Member States, it is logical that the onus for assessing costs and benefits should fall on them, particularly as almost all data and assumptions originate from them.

As far as the coherent model of European rail traffic flows is concerned, the Commission remains to be convinced that the additional insights it would provide would justify the potentially significant level of resources needed in order to bring it to fruition.

44. A Memorandum of Understanding was adopted on 8 June 2010, setting out the steps to remedy this situation. The three Member States concerned by PP3 (France, Spain and Portugal) have signed it.

45. The Commission would like to emphasise that cost escalations are typical for large infrastructure projects.

46. The Commission agrees on the benefits of thorough and detailed project preparation; however, as the Court states in the previous paragraph, cost escalations in the cases studied generally arose for reasons linked to unforeseeable factors.

Concerning the Madrid–Levante section (but also other equally complex projects), the cost increases mentioned by the Court could be due to a variety of factors, some of which are unforeseeable. For example, high inflation in construction projects in Spain and an unforeseen increase in costs due to difficult geological conditions have had a significant effect on the Madrid-Levante project cited by the Court.

47-48. The Commission shares the Court's opinion that the cost escalations did not have a direct impact on the EU budget and notes that the Court has not documented any indirect impacts either.

The Commission would like to underline that, according to the new model of financing decisions for TEN-T funds for the period 2007-2013, the beneficiaries and project promoters have to submit a Strategic Action Plan (SAP) detailing how the project will be implemented, including in terms of project planning, the risk management plan and project governance. The

TEN-T Executive Agency has already developed guidelines on this issue and is working on the exchange of good practices between beneficiaries.

Box 8

The Warsaw-Gdynia, stage II project faced many problems that are independent of the Commission's approval procedures, such as significant delays in the tendering procedures, problems with land purchase and ensuring access to the building site, as well as disputes with contractors. The Commission has repeatedly raised the issue of cost overruns on the Warsaw - Gdynia, stage II project, and the Polish authorities have announced that they will submit a modified proposal for it. The Commission made it clear that it will not process this modification without the Polish authorities submitting a horizontal analysis on cost overruns in the rail sector and how they are dealt with.

54. The Commission agrees with the Court that overall progress on trans-European rail transport depends on achieving synergies between the effects of legislative measures affecting markets and interoperability and co-financing policy measures.

Box 11

The Commission is closely monitoring this situation in the framework of ERTMS Corridor A. It has adopted a European Development Plan for ERTMS, as well as a proposal for a regulation for Rail Freight Corridors, which was adopted on 15 June 2010 by the European Parliament and the Council. Moreover, the Commission has appointed TEN-T Coordinators.

Box 12

The Commission is aware that no freight trains currently use the Roma-Napoli and Bologna-Firenze high-speed, high capacity lines. However, thanks to the introduction of these high-speed, high-capacity lines, there has been more capacity for freight transport on the existing conventional lines. In any case, most of the expected benefits from the ERDF funded sections relate to passengers' improved access to the rail network and not to freight transport.

57. The Commission acknowledges that progress towards interoperability is slow. Radical harmonisation is not possible, given that rail infrastructure and rolling stock have long lifetimes and the sector's investment costs need to remain realistic.

Nevertheless, the amount of interoperable infrastructure and rolling stock is increasing and the number of derogations requested by Member States from the Commission's implementing legislation setting out Technical Specifications for Interoperability (TSI) is limited. This shows that the existing TSIs are being implemented successfully. As far as the TEN-T network is concerned, the TSIs are expected to be completed in 2010. This will benefit both TEN-T and Cohesion policy funded projects.

The Commission will continue its efforts by concentrating on the implementation of TSIs that will deliver significant benefits in the short and medium term, such as telematics applications in signalling, freight and passenger transport. It has also set up corridor organisations to identify and tackle all issues that hamper the competitiveness of rail freight along axes.

As far as the measures in paragraph 8 of Annex VII are concerned, the Commission considers that steps are being taken at the European level to improve the situation:

1) in the framework of Directive 2008/57, activities are ongoing to classify all national rules regarding rail traffic, assess which ones are equivalent and thus avoid duplication of controls, in particular at the borders

2) in the framework of the ERTMS corridors, working groups are identifying all existing obstacles - in particular delays at the borders - by looking at the obstacles specific to each border.

60. The European coordinators have made efforts to alleviate system constraints on corridors, which will be extended as a result of the proposed regulation on rail freight.

The Commission's November 2008 proposal for a regulation creating a structure for each rail freight corridor is also significant in this respect. It will develop reinforced cooperation between Infrastructure Managers on traffic management (operational measures) and investment (mainly to remove bottlenecks and harmonise technical conditions). It is based on the experience with the Rotterdam-Genoa and Antwerp-Lyon/Basle corridors.

CONCLUSIONS AND RECOMMENDATIONS

62. The Commission welcomes the work of the Court, which is especially timely given the upcoming revision of the TEN-T networks.

63. The Commission agrees with the Court that Priority Projects are the main mechanism for co-ordinating and concentrating financial resources on TEN-T networks and continues to pursue this course, while ensuring complementarity with regional development objectives and cohesion policy. In this light, it understands why the Court wishes that Priority Projects should be defined on the basis of an analysis of current and expected traffic flows. It is important to note, however, that while such studies have been carried out, both for individual projects and for the network, they have yet to lead to conclusive results and so cannot currently be used as such.

The Commission considers that arriving at a definitive description of the main trans-European rail axes is likely to be particularly difficult, as they are in a constant state of flux depending on migration, trade patterns and the geopolitical context. The Commission, however, also shares the view that the definition of the main network should be based on objective criteria. Therefore, in the future, Priority Projects should continue to be based on political agreement between the Council and European Parliament, but relying even more on the best available evidence.

Recommendation 1

Recommendation 1. first indent. The Commission already has close contacts with the Member States and the Railway Institutions. It will continue to work closely with them on rail traffic matters.

Recommendation 1. second indent. As part of its ongoing stakeholder consultation exercise on the TEN-T guidelines, the Commission is looking for input on how this can best be done.

64. The Commission welcomes the Court's acknowledgement of the improvements flowing from the concentration of TEN-T co-financing at cross-border locations and the work of the Coordinators. It agrees that further work is needed to define a bottleneck and will work on this.

The Commission notes that Cohesion Fund project approval procedures have substantially changed from 2007.

The Commission welcomes the Court's recognition of the improvements made to TEN-T selection procedures; however, it accepts that there is room for improvement as regards the use of cost-benefit analysis.

Recommendation 2

Recommendation 2. first indent. The Commission agrees that further work on defining bottlenecks is needed and will continue to work on this. The European Coordinators have analysed the bottlenecks on the Priority Projects for which they are responsible. The Commission also reported on the bottlenecks in its yearly reports.

Recommendation 2. second indent. The Commission agrees that the Coordinators play a vital role and appointed three additional Coordinators on 8 June 2010.

Recommendation 2. third indent. The Commission considers that the procedures for approving projects are sound, particularly following their substantial overhaul for the 2007-2013 programming period. The Commission continues to work on their improvement and is investing significant resources to contribute to the improvement to project preparation and appraisal. As far as the technical characteristics of projects are concerned, their review will be greatly improved through the continued development of TSIs.

Recommendation 2. fourth indent. The Commission accepts that there is room for improvement as regards the use of cost-benefit analysis. In the future, the TEN-T Executive Agency will develop a more systematic approach to cost-benefit analysis. To do this it will work with the projects selected in priority 3 of the 2010 annual call to improve project preparation, including by developing consistent approaches to cost-benefit analysis.

Nevertheless, given that TEN-T financing only co-funds a limited amount of each project when compared to that funded by Member States, it is logical that the onus for assessing costs and benefits should fall on them, particularly as almost all data and assumptions therefore originate with them.

Recommendation 3

The Commission recognises the importance of exchanges of information amongst project promoters. The TEN-T Executive Agency will facilitate this by organising discussions at its regular workshops with current and potential beneficiaries on best practices and knowledge exchange between all project promoters, particularly in the rail sector.

66. The Commission shares the Court's analysis of the measurable improvements on lines dedicated to high-speed passenger services. It is working to improve the situation on conventional mixed and freight lines.

Recommendation 4

Recommendation 4. first indent. Through adopting Technical Specifications for Interoperability the Commission has worked on these "practical constraints" and will continue to do so. The European Coordinators also devote special efforts to these issues.

Recommendation 4. second indent. In November 2008, the Commission proposed a regulation creating a structure for each rail freight corridor that will strengthen cooperation between Infrastructure Managers (supervised by Member States), for traffic management (operational measures) and for investment (mainly in removing bottlenecks and harmonising technical conditions). It is based on the experience with the Rotterdam-Genoa and Antwerp-Lyon/Basle corridors.