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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 691 final/2
Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure

Delegations will find attached document COM(2016) 691 final/2.

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Brussels, 24.10.2016
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2013/0029 (COD)

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TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 2012/34/EU establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure

(Text with EEA relevance)

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1. BACKGROUND

On 30 January 2013, the Commission adopted a comprehensive package of six legislative proposals to deliver better quality and more choice in rail services in Europe.

Improvements in service quality and efficiency are needed to make rail a more attractive choice for passengers and to encourage modal shift. Better value for money and sustainability can be achieved for scarce public funds.

The package also aims to encourage innovation in EU railways to meet user expectations. It does this in three different and interrelated ways by:

(1) opening domestic passenger markets to competition and making tendering for public service contracts compulsory;

(2) strengthening the independence of infrastructure managers so that they control all the core functions of the rail network and ensuring fair access for all to the railway;

(3) strengthening the role of the EU Agency for Railways by making it a 'one stop shop' for issuing EU-wide vehicle authorisations for placing them on the market and EU-wide safety certificates for operators.

Date the proposal was sent to the European Parliament and to the Council (document COM(2013) 29 final — 2013/0029 COD):	31 January 2013
Date of the opinion of the European Economic and Social Committee:	11 July 2013
Date of the opinion of the Committee of Regions:	8 October 2013

Date of the position of the European Parliament, first reading: 26 February 2014

Date of adoption of the position of the Council: 17 October 2016

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The general objective of the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU ('the Governance Directive') is to further develop the single European railway area by opening up domestic rail passenger markets to competition and to create a level playing field for all railway undertakings. Increased competition is expected to improve the quality of rail services and to enhance their operational efficiency, thereby improving the competitiveness and attractiveness of rail vis-à-vis other transport modes.

To attain this objective, the Commission proposed new rules to strengthen the independence of infrastructure managers, prevent cross-subsidies from infrastructure management to railway operations and improve coordination between different actors in the railway market.

This Commission proposal is closely linked to the proposal to amend Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail. The objective of the proposed Regulation is to introduce the principle of mandatory competitive tendering for public service contracts and improve the conditions for effective tenders, for example through improved access to rolling stock.

3. COMMENTS ON THE COUNCIL POSITION

The position adopted by the Council at first reading on 17 October 2016 endorses the main objectives of the Commission proposal. In particular, it provides for the opening of domestic rail passenger markets to competition and for improved governance rules on the management of infrastructure.

Although the Council position does not go as far as the Commission would have wished on a number of points, it is a meaningful step forward compared to Directive 2012/34/EC for a number of reasons:

- The Commission proposed more stringent separation requirements between infrastructure managers and other entities of vertically integrated undertakings. The Council position provides greater flexibility of structures, and in particular the possibility to maintain (or revert to) a vertically integrated model. While the Commission considers that vertical separation remains the most straightforward way to ensure the non-discriminatory treatment of new entrants, it appreciates that the Council position introduces a number of new safeguards. These are designed to ensure the impartiality of infrastructure managers, which include notably limitations on double mandates and the avoidance of conflicts of interest.

- The Commission proposed rules designed to protect all infrastructure management functions from undue influence. The Council position restricts the application of the most stringent rules to the essential functions. For example, capacity allocation and determination and collection of track access charges that are critical for the non-discriminatory access to the infrastructure of new entrants. The Commission regrets

that the opportunity to introduce broader and stricter safeguards applying to all infrastructure management functions, in particular as regards vertically integrated undertakings, was missed. However, it also notes that new general rules have been introduced to ensure transparency and impartiality also in traffic management and maintenance planning. The original concept of 'fully fledged infrastructure manager' handling all functions at the heart of the railway network was not taken up by the Council. Instead, the Council opted for a more flexible approach, where Member States are free to explore the possible benefits arising from outsourcing and public-private partnerships for infrastructure management. Given the current budgetary constraints, and regardless of their structural model, Member States considered it important to be able to harness the contribution of private capital and to provide for a legal framework that allows innovative forms of infrastructure management. The Commission can accept this more flexible approach, in the light of the provisions introduced to ensure that conflicts of interests are avoided and that infrastructure managers bear full responsibility and dispose of powers of supervision over any outsourced functions. The changes introduced by the Council have altered certain substantive elements of the framework proposed by the Commission. However, the Commission considers that the objective of impartial and effective infrastructure management can still be met with the Council position, in particular in the light of a set of new provisions which constitute significant progress over the status quo.

- The Council position confirms stringent financial transparency rules. The provisions on accounting separation, coupled with the new rules on intra-group loans and services, use of infrastructure managers' dividends and full regulatory oversight of financial flows within vertically integrated undertakings will ensure that neither infrastructure charges nor public funds can be diverted from their destination in order to cross-subsidise activities carried out in competition with other undertakings. This will help create a level playing field.

- It is crucial that the Council position also requires mandatory cooperation between infrastructure managers at European level as well as with their users. This cooperation is expected to improve infrastructure managers' performance and customer orientation.

- The further reinforcement of regulatory bodies' powers are another crucial element of the package. The new rules will allow for effective enforcement by national regulatory bodies and the Commission.

4. CONCLUSION

While the Council position falls short of the wide-ranging amendment of the legislative framework proposed by the Commission in 2013, the amended proposal remains of overriding importance to further develop the single European railway area without further delay by ensuring that the remaining national monopolies on domestic passenger transport by rail are dismantled. The proposed rules will clarify and improve the legislative framework. They will create more favourable conditions for competition to flourish and for discriminatory practices to be prevented or redressed.

In a spirit of compromise, the Commission accepts the position adopted by the Council thus allowing the European Parliament to adopt the final text in a second reading. Indeed, the Commission considers that adopting both the market and technical pillars would maximise the

benefits in terms of the quality of service, efficiency and the competitiveness of the rail transport industry.