European Commission

INCEPTION IMPACT ASSESSMENT	
TITLE OF THE INITIATIVE	Improving passenger railway security
LEAD DG – RESPONSIBLE UNIT	DG MOVE A5 TRANSPORT SECURITY
LIKELY TYPE OF INITIATIVE	Legislative and non-legislative initiatives
INDICATIVE PLANNING	April 2018
ADDITIONAL INFORMATION	https://ec.europa.eu/transport/themes/security/land_security_en

This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content.

A. Context, Problem definition and Subsidiarity Check

Context

Terrorist attacks in the European Union have over recent years shown a greater focus on attacking public areas, where crowds of people with little or no protection can be killed or injured. In line with President Juncker's address on the State of the Union, the Commission adopted a package of measures on counter-terrorism on 18 October 2017, which announced concrete measures to enhance the protection of public spaces, including rail transport. The need for a common risk assessment for public areas has also been highlighted in the 2016 Commission Communication on the European Agenda on Security and in several European Council conclusions.

While EU legislation to protect aviation and maritime transport is relatively developed, there are no corresponding measures at EU level on rail security. In responding to the heightened level of terror threat to transport and specifically rail networks, some Member States have strengthened their national security measures to protect rail transport, but this has been carried out in a largely fragmented and uncoordinated way. While these national initiatives can be welcomed as a pro-active response from Member States, these actions have highlighted the issue of coordination and achieving optimal efficiency while preserving the open character and accessibility of rail transport. Thus ensuring that they are compatible with the wider EU transport objectives to liberalise and develop the single European railway area.

Problem the initiative aims to tackle

The problem that the initiative aims to tackle is the increasing risk of harm to rail passengers due to terrorist attacks. Given the number of stakeholders who have to act to prevent or react to terrorist incidents, the difference in the perception of risks across the Member States and the openness and interconnectivity of the rail network, the coordination at European level is often very challenging, and can lead to an insufficient level of protection across the EU. The majority of Member States view their rail networks as largely a domestic issue with recourse to ad-hoc bilateral discussions with neighbouring States concerning cross border services. However this has allowed gaps to develop in coordination on security matters. The increasing development of new high speed trans-European rail corridors and the liberalisation of the rail sector may further increase the vulnerability to security threats over the coming years if action is not taken.

This increasing potential risk of harm to people also reduces the attractiveness of rail services and undermines the competitiveness of rail travel relative to other modes. The development of rail services across the EU is a key element in the creation of a single European railway area and contributes more generally to the deepening of the single market.

Moreover, individual Member State initiatives to increase security on specific rail services without coordination with the EU and other States could in some cases be perceived to have a discriminatory effect on some operators and also create new obstacles for the liberalisation of the rail sector as foreseen by the recent 4th rail package. This could inhibit the broader movement of goods, services, people and capital across national borders, reducing

competitiveness and economic and social development across the EU as a whole.

The responses received from national administrations and economic operators and evidence gathered from a review of academic and industry literature in the context of a study[1] carried out by Steer Davies Gleave/DG MOVE in 2016, show a diversity of approaches. In some places, protective measures put in place reflect well-documented historical concerns. In others, they respond to the tendency of terrorists to target public spaces, including railway stations and their immediate surroundings. In several other cases however, perceptions of threat are motivated by events (or absence of events) at the national level rather than by systematic analysis of the problem on an EU-wide scale. The lack of methodical evaluation also reflects the fact that the likelihood of attacks cannot be established by statistical means, which makes it difficult to plan adequate and proportionate counter measures.

The following causes of the problem (problem drivers) have been identified so far:

1. an insufficient understanding of the security threat by some interested parties, partly a result of the infrequency of severe security incidents but also due to non-harmonised reporting and insufficient sharing of data;

2. an inadequate response to the threat across the European rail network as a whole (illustrated by the variety of responses put in place by the Member States), reflects the varying levels of the real threat as well as the perceived level of risk across Member States, in combination with the perceived weak business case for the railway sector to invest scarce resources to address unspecified and poorly understood threats;

3. different approaches to the mitigation of security risks among rail industry decision-makers driven by factors such as cultural differences and by the inconsistent risk assessment methodologies that are being used;

4. fragmentation of, and gaps in, security arrangements on international services and responsibilities at both the national and EU level, as a result of failure to coordinate security measures; the extent of this problem further increases in line with the growth[2] of the European rail network.

Subsidiarity check (and legal basis)

The treaty on the functioning of the European Union (Article 91 TFEU) stipulates that the common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States shall be laid down by the European Parliament and the European Council. This initiative is aimed to complement existing EU security requirements for the protection of international air and maritime transport passengers by ensuring that international rail passenger are also protected to a proportionate level.

Security requirements imposed at the National level by Member States do not adequately enable the security of cross-border journeys to be treated as effectively as a single journey where two or more jurisdictions are crossed with different approaches to security protection and incident response and inadequate coordination mechanisms. There is also a need for competition reasons, to subject all EU transport operators to provide equivalent levels of security for all segments of an international (intra-EU) journey, subject to an appropriate risk assessment using a common methodology. The most appropriate level to address the identified problems is therefore at EU level in order to ensure a commensurate level of security protection across all Member States.

B. Objectives and Policy options

Combating cross-border crime and terrorism is a common European responsibility and one of the ten Commission priorities announced by President Juncker. The proposed measures will contribute to the establishment of an effective and genuine Security Union as proposed by the European Commission[3].

The general objective of the EU initiative is to reduce the risk and impact of terrorist acts and other criminal acts

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1. Steer Davies Gleave "Study on options for the security of European high-speed and international rail services" available at https://ec.europa.eu/transport/sites/transport/files/2016-12-options-security-european-high-speed-international-rail-services.pdf
This study identifies policy options at different levels of intervention ranging from risk assessment and contingency planning to security design for stations and trains and the use of intelligent surveillance systems. It recommends not limiting security to a specific kind of rail service (e.g. international services). The options propose a mix of packages of mandatory and technical guidance measures that could be undertaken at EU level.

2. Kilometres travelled by passenger rail are projected to increase by around eighty percent during 2010-50, with an annual number of rail passengers raising from five hundred to an estimated nine hundred billion passenger-kilometres (cf. EU Reference Scenario 2016: https://ec.europa.eu/energy/en/data-analysis/energy-modelling)

3. Cf Commission Communication COM(2016) 230 final: "In order to be as well prepared as possible for such risks, law enforcement authorities and other key authorities – such as those responsible for transport –,need to exchange relevant information in an efficient way and to design preventive measures in a coordinated manner across borders."

on the European rail network, recognising both the prevention and mitigation dimensions of the security issue.

The possible measures presented below can help to create the basis for determining, once there will be a common understanding of the threats, vulnerabilities and possible countermeasures, a possible common security approach, identifying proportionate and coherent objectives for the Member States without imposing the means to achieve those objectives.

The impact assessment will consider the possibility to cover both international and domestic services as the majority of international passenger rail services are integrated with domestic passenger rail services.

Far-reaching measures such as those implemented in civil aviation are not likely to be selected for rail transport in the absence of specific and actionable threats because openness and ease of access, short waiting times and affordable prices for rail transport are essential elements of the rail offer for the majority of users and are essential for the operation of the transport mode. The discussions in LANDSEC[4] showed that this opinion is shared by a wide majority of the experts. However Member States should retain the ability to implement higher temporary security measures if they are justified by the assessed risk and which take account of wider EU single rail area operation.

Similarly, since rail networks, rail operators and transport and security management are very different at national level, no single set of detailed measures could be optimally applied by all Member States to rail transport.

Security Measures and Policy Options

In order to address the problem drivers presented above, a number of legislative or non-legislative measures can be envisaged. These could be combined into different policy options reflecting different levels of ambition. All options should be sufficiently flexible as to allow dynamic adaptation to new types of threat.

1. Measures aiming at improving the understanding of the threat to passenger rail

The following measures, addressing the first driver, aim to improve the understanding of the security threat by all interested parties, and to harmonise the reporting and sharing of data:

- Collect and share information on rail security incidents and counter-measures

This measure would address the insufficient sharing of information between different public and private actors within the EU rail sector. This would reduce the problem of an overall lack of data and lack of understanding of the EU wide risk to rail transport due to the infrequency of the events that security interventions are intended to prevent or mitigate.

- Implement a common methodology for assessing risk

Security risk assessments examine possible risk situations and potential terrorist modi operandi and subject them to a threat, consequences and vulnerability analysis in order to identify common risks and proportional non-conflicting mitigation measures. This measure will build on and formalise the process started by DG HOME and DG MOVE to develop a common methodology for rail security risk assessment in a national expert group established by Commission services.

- Involve the passengers and promote security awareness for international travellers

Provide easy ways for passengers to inform the company about incidents or suspicious behaviour with information provision available in different languages.

2. Measures aiming at providing an adequate response to the threat to passenger rail

The following measures, addressing the second driver, would encourage better consideration of aspects related to the European dimension of the problem and a convergence of the measures adopted at national level:

- Reinforce cooperation between the police and railway companies

A formalised international mechanism for systemic cooperation between law enforcement authorities and interested parties (rail undertakings, station and infrastructure managers) would ensure that protection would take into account the specificities of the sector and be proportionate.

- Make an inventory of best practices

It would be useful to establish for the Member States and the rail companies an inventory of the best security practices at European level, using an agreed objective methodology, without imposing particular solutions.

- Develop risk management plans covering protective security and operational recovery measures for rail

On the basis of the risk assessment processes referred under 1B above, Member States could be required to

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[4] In 2012 the Commission created the Expert Group on land transport security (LANDSEC) as a collaborative platform to help Member States to share and benefit from each other's technical experience and find innovative ways of enhancing rail security.

develop national risk management processes including notably holistic security plans for stations serving international rail passengers which contain proportionate protective security measures for the whole station and also set out the steps to be taken to manage a security incident affecting an international passenger rail service.

3. Measures aiming at ensuring a better consistency of mitigation measures put in place by the Member States

The following measures, addressing the third driver, would aim to encourage the implementation of harmonised basic measures in the sense that it brings European added value:

- Staff scrutiny and training

All staff should be subject to adequate security scrutiny and training according to a common syllabus. Including awareness and security measures based on initial and recurrent intervals to improve the preparedness of the operators to prevent and respond positively, should an incident occur. All training records should be made and kept.

- Improve station and train security design

Security by design could be installed as a standard to mitigate the effects of an attack, e.g. explosion, shooting or an attack with a vehicle.

- Wider use of security technologies and customised security processes

Technology and security services could be increasingly used as they are important tools in combating terrorism, notably in the field of timely detection and monitoring of potential threats to rail, information systems and resilience of equipment and infrastructure. A wider use of technology could improve security while reducing the cost of technologies. Moreover, particular focus is required on the development and deployment of scalable security solutions incorporating as appropriate mobility, flexibility and unpredictability and customised as required by evolving threats and related risks. Common good practice guidelines should be developed to ensure that technology is used with maximum effectiveness as allowed within the constraints of Member States laws.

4. Measures aiming at improving the coordination of the Member States to address trans–border effects

The following measures, addressing the 4th driver, could be implemented to reduce the fragmentation of security arrangements and responsibilities and coordinate security measures on international rail services:

- Ensure consistency of controls

Equal, or at least equivalent security controls could be established at all stations serving an international line to prevent weaknesses in the security chain. In addition, a robust system for cross-border cooperation after a security incident on an international train could be considered. Solutions to specific coordination issues, such as the need to allow staff with security responsibilities to act effectively to reduce security risks along the entire length of an international journey could be examined.

- Set up a European rail security coordination body with focal points from the Member States

Rail security Focal Points could be appointed in the Member States to be informed and find solutions to issues requiring coordination at European level and address all issues of common interest in the area of rail security. This would not interfere with the organisation of rail security at national level notably in case of events.

- Organise common security exercises

Railway staff are on the front line should an incident occur on the railway. Their training could be strengthened to help them better deal with terrorist incidents with a cross-border dimension by participating in exercises organised jointly by the public authorities of neighbouring countries with cross-border rail services, involving where appropriate EU specialised bodies such as RAILPOL and Atlas.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

Security measures have a cost. This cost must be justified by the positive effects of mitigating terrorist risks. Recent terrorist attacks on public transport have shown that the increase in terrorist risk discourages some travellers from using them and that previous levels of use are recovered very slowly. Effective security measures will increase the confidence and trust of travellers in using rail contributing to greater passenger growth.

Conversely, the current uncoordinated national laws envisaged by the Member States could lead to a significant cost increase for railway operators and users. Total travel time is increased for travellers using Thalys services from Paris and Lille compared to those going to Paris and Lille. The obligation imposed on railways to verify the identity of international travellers envisaged in some Member States would oblige companies to acquire and deploy new skills and would entail more queuing time. Such requirements need to be considered on a threat informed risk assessment basis and in the light of requirements such as proportionality, data protection and cost-effectiveness.

The overall demand for transport is increasing Better protection for users against the new risk represented by terrorism is part of the structural measures to develop rail transport to meet society needs.

Improved and coordinated security will enhance the operational efficiency of passenger rail services.

The rail transport sector should be the most affected by this initiative, but others, such as the tourism sector, could also be affected positively. International rail services are often used for tourism, including weekend tourism. The fear of using public transport following terrorist attacks leads to a reduction in the influx of tourists and a reduction of many activities, in particular SMEs linked to tourism.

Likely social impacts

The aim of the initiative, which is to reduce the risk and impact of terrorist attacks in rail transport, brings a direct social benefit to passengers. The positive impact on the attractiveness of passenger rail services could result in more jobs, better mobility, better safety and less expense for transport users, because the alternative to public transport is private transport which can be more expensive, more congested and take much longer over greater distances and is less safe than rail transport.

The initiative is likely to improve citizens' confidence in international travel. Finally, by eliminating potential obstacles to freedom of movement entailed by uncoordinated measures or increased security risks perceived by rail users, the initiative will contribute to the smooth functioning of the EU internal market.

Likely environmental impacts

Improved security would contribute to greater societal confidence in rail travel, thus maintaining/increasing the modal share of rail transport and would contribute to reducing the carbon footprint from transport, an EU intervention would have a positive impact on the environment.

Likely impacts on fundamental rights

The planned measures should be designed to have a positive impact on the fundamental rights of citizens, in terms of enhanced passenger protection. Security technologies such as surveillance technologies have been flagged in the past as restricting the confidentiality of personal data. The right balance between the right to be protected against malevolent acts and the protection of confidentiality of personal data must be found. The envisaged technologies such as video surveillance are now widely used in the railway environment and the proposed measures will be without prejudice to the application of the prevailing rules on the protection of individual citizens' data.

Likely impacts on simplification and/or administrative burden

EU intervention should lead to a certain approximation of national rules and practices, making them more coherent and reducing the administrative burden for internationally active operators (like most rail operators).

The impact on the workload of the Member States with regard to implementing foreseen rules is unknown at this stage, as it may be increased due to the need to adapt their organisation; conversely it may be reduced by the clarification of organisational procedures and planning.

D. Data Collection and Better Regulation Instruments

Impact assessment

An impact assessment will be carried to support the preparation of this initiative and to inform the Commission's decision. It will analyse the problem identified and its possible causes, assess whether an EU initiative is needed and what would be the likely impacts of the options. An Inter-service Steering Group, composed of representatives from all relevant Commission Directorates-General, will be set up to monitor the preparation of the impact assessment and of the proposal.

Data collection

Data collection will be facilitated by quantitative and qualitative information already gathered through previous studies and research projects on rail security, such as EU-funded projects PROTECTRAIL and SECURESTATION and the fact-finding study carried out by DG MOVE in 2016.

In addition, the identification of appropriate measures at European level will result from a detailed analysis of the vulnerabilities of the rail transport system with regard to the threat including the work undertaken in the context of the process of the rail risk assessment launched by the Commission Services in June 2017. This analysis has already started in cooperation with the European threat analysis services (INTCEN) and experts from the Member States.

Additional information which may be needed will be obtained through targeted consultations, including of the LANDSEC expert group and the group of national experts on risk assessment.

The preparatory work, well advanced since the attack on a Thalys train in 2015 and the discussions at the Transport Council that followed, the multi-disciplinary dialogue initiated within the Security Union Task Force, and the consultation of the experts and the general public already undertaken, emphasised the fleeting, evolving and unpredictable nature of the threat, which cannot be associated with specific modalities and known impacts.

Acting at EU level is an urgent necessity, as recent experiences showed that the uncoordinated measures at the national level are inefficient. Defining a set of prescriptive far-reaching measures does not seem a proportionate approach.

Consultation strategy
The aim of the consultation is to collect possible contribution to rail security. On 4 July 2017 the Commission held an open public conference on possible actions to improve passenger rail which was open to the general public and advertised on the Commission website. An online public consultation will be launched on 7th December 2017 and will be open for 10 weeks. It will be issued in English in a first step and available in all official languages of the EU on 15th December 2017 It will enable the public to express their views on the issues identified, the possible measures for improving EU railway security and their likely impacts. The questionnaire is accessible at *http://ec.europa.eu/info/consultations.* Moreover, targeted consultations of the main stakeholders (Member States, rail operators, rail infrastructure managers, rail users associations and technology and security providers) and consultation of existing expert groups, notably the LANDSEC, will also be carried out. They will aim at gathering specialised input (data and factual information, expert views) on specific aspects. A synopsis report will be published, summarising all the consultation activities and the replies received.

Will an Implementation plan be established?
An implementation plan will be established to help Member States to overcome possible organisational and technical challenges. The implementation plan will also foresee appropriate support actions by the Commission.