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To:

- *European Commission, DG MOVE, Head Unit B2, S. Prout*

Copy to:

- *European Commission, DG MOVE, Directorate, Jean-Eric Paquet*
- *European Commission, DG MOVE, Deputy Head Unit B2, P. Grillo*
- *European Railway Agency, Executive Director, M. Verslype, Head Safety Unit, T. Breyne*
- *ANSF, Head of Department, Ing. Alberto Chiovelli*
- *Trenitalia, CEO Divisione Cargo, Dr. Mario Castaldo*

Brussels, 19th April 2012

Dear Ms Prout

The UIP and ERFA have been informed by the Italian Member Association (ASSOFERR) about the introduction of an illegal and unjustified restriction for ECM (Entity in Charge of Maintenance) by Trenitalia implying a limitation of the free movement of dangerous goods vehicles (RID wagons) in Italy (see attached letter, as appendix 1 and the corresponding answer from our Italian member association as appendix 2).

Despite the entry into force of legislation 445/2011/EC on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007, Trenitalia introduces in its own safety management system requirements which **clearly violates Article 12 (6) of the EU regulation**, according to which the so-called "Self-declaration of conformity of ECM" are recognized equivalent to the certification under either the directive 445/2011/EC or the ECM Memorandum of Understanding till 31st May 2013. This alternative is valid since May 2011 as direct EU law also in Italy and was agreed by the sector as well as by the member states through the RISC decision. Furthermore, a given time limit of less than 1 week to organize the situation for all Self-declared ECM is totally impractical and unrealistic.



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Without violating the ECM legislation, Trenitalia should inform the sector if they are aware of any open points on maintenance issues linked to a self-declared ECM and impacting negatively the current high level of railway safety. This however would require a specific and individual response but not a generic one as provided in Trenitalia's letter.

As stated in the safety directive 49/2004/EC, under Art. 10 (5): "The holder of the safety certificate shall without delay inform the competent safety authority of all major changes in the conditions of the relevant part of the safety certificate." In this regard, Member States and in particular the National Safety Authority "shall ensure that safety rules are laid down, applied and enforced in an open and non-discriminatory manner, fostering the development of a single European rail transport system" (see Art.4 of the safety directive).

By introducing a massive reservation on self-declared ECM, and as such violating EU law and enforcing discriminatory rules, Trenitalia doesn't fulfill anymore the requirements laid done in Art. 10 (1) 49/2004/EC as evidence is made that its own safety management system doesn't meet the requirements of the relevant Community legislation. As a matter of fact, the Italian NSA should enforce the respect of EU law and make reservations on the concerned safety certificate. In this regard, **we urge the Commission and the European Railway Agency** to investigate the issue discuss the problem with the Italian safety authority (ANSF) and **ensure that the NSA correctly understand and endorse their responsibilities in terms of supervision and regulation of railway safety.**

The UIP and ERFA are further strongly concerned by the impact of such a restriction on dangerous goods traffic in Italy, which in addition has the possibility to cause **severe impact on international traffic** with origin Italy as well. Freight forwarders and shippers are getting worried and confused. They are also very worried about the economic impact and the consequences such a limitation would have to their existing railway traffics.



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We remain hopeful that the current measures to ensure a timely and correct implementation of European legislation and in particular the correct understanding of the different roles of the actors in the safety processes, according to the safety directive, will be effectively implemented and that the Commission will provide all the assistance required to tackle this issue. We'd like also to use this opportunity to renew **our request under the introduction of the 4th railway package to really enforce the role of the ERA** as this case underline the need for a strong auditing–safety body on European level.

We remain prepared to discuss the issue with you or your competent services in more detail and thank you for your consideration.

UIP

Dr. Eckart Lehmann
President UIP

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ERFA

Pierre Tonon
Secretary General of ERFA

A handwritten signature in blue ink, appearing to read 'Tonon', written over a light blue grid background.

UIP

Gilles Peterhans
Technical coordinator UIP

A handwritten signature in black ink, appearing to read 'Peterhans', written over a light blue grid background.

Appendix:

- (1) Letter Trenitalia 17664 dated 13.04.2012
- (2) Answer Assoferr to letter Trenitalia