

Position Paper 4th Railway Package

**A vision for achieving growth,
innovation and investment in the railway market**

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ERFA's background and proven track record

ERFA is fighting for the interests of new entrants on the rail market, both in the freight and passenger sectors. ERFA has been active since 2002, its foundation year, in supporting market opening, a level-playing field on the market and the attraction of new investment, thereby creating the right environment for growth in the rail sector. Via its work on the Recast of the 1st Railway Package, on the present 4th railway package and the work it has done in pursuing infringement cases of EU law, ERFA stands firmly at the forefront of the rail liberalisation agenda. ERFA is a recognised lobby organisation in Brussels and uses its standing to promote the interests of new entrants vis-à-vis the European Commission, European Parliament, the Council and European Railway Agency.

The importance of new entrants on the rail market

The ERFA objective is to unleash rail's true potential and turn it into a transportation mode adept to the needs of customers and passengers. Compared to other modes of transport, particularly road and aviation, rail is lagging behind in customer-orientated developments. This trend needs to be reversed. ERFA fully backs the EU's White Paper goal of achieving sustainable transport, moving more freight and passengers off the roads and onto rail. This objective is currently held back by monopolistic rail operators intent on maintaining their own dominant position to the detriment of the wider rail interest.

The sheer number of barriers and discriminatory practices faced by ERFA members across Europe simply serves to kill-off much-needed dynamism, innovation and creativity in the rail sector. The barriers also undermine the wider interest of boosting growth and jobs across Europe.

ERFA refuses to believe that domination by a handful of very powerful railway operators will benefit customers, passengers or the environment, particularly in the long term. This is the direction in which European rail is currently heading.

4TH Railway Package

There is a chance to reverse this now by getting the 4th Railway Package back on track. ERFA believes that the rail reform, as proposed by the European Commission's 4th Railway Package, is the right way forward for its members and for achieving a much-needed revitalisation of the rail sector in Europe.

However the European Parliament position adopted in February 2014 puts the advantage firmly back in the hands of the few dominant, monopolistic rail operators to the detriment of the other rail users and of European society at large. It is currently in the hands of the Council and the new European Parliament to turn rhetoric into reality, and to unleash rail's potential.

This is ERFA's goal.

ERFA's key points to achieve rail growth

1. Strict and transparent financial structures to ensure a level playing-field

ERFA supports the European Commission proposals of so-called Chinese walls guaranteeing transparent financial flows within holding structures, whereby the infrastructure owner and one or other railway undertaking are under the same ownership.

As long as a financial stake exists between the infrastructure manager and one or other railway undertaking, the infrastructure manager will continue to have an interest in awarding privileged treatment to one or other railway undertaking to the detriment of the other rail users and the rail system as a whole.

ERFA believes that the entity responsible for the management of the tracks should not have an interest in undermining or blocking other rail users, with which it has no direct financial ties. This type of treatment is unjustified and is sadly experienced by ERFA members across Europe over and over again, jeopardising the very existence of new entrants, deterring investment in the rail market and going against all serious attempts to promote rail growth.

ERFA opposes cross-subsidisation between the infrastructure owner and a railway undertaking within the holding. Public funds intended for the maintenance of the rail network should be reinvested in the network to improve the efficiency and performance of the rail system. Diverting these funds to other purposes such as towards the acquisition of railway undertakings elsewhere in Europe undermines the conditions needed for a healthy rail system.

ERFA opposes the European Parliament position to allow greater flexibility in the granting of loans from the holding company to the infrastructure manager. This compromises financial transparency and could in practice allow infrastructure managers' revenues, including public funds allocated to the infrastructure, to be diverted for other purposes.

ERFA opposes the European Parliament position allowing infrastructure managers to raise funds on the capital markets via other legal entities. This gives an advantage to a railway undertaking which is part of a holding structure, benefiting from the rating of national infrastructure managers and giving it easier access to funds.

2. Strengthen the role and independence of the infrastructure manager to ensure equal treatment of all users on the rail network

ERFA fully supports extending the responsibilities of the infrastructure manager to all tasks necessary for providing high performing, sustainable and efficient rail infrastructure. This includes responsibility for renewals, maintenance, investment and operations on the network.

ERFA fully supports the independence of the infrastructure manager in performing all of these essential tasks. At present one or other railway undertaking, who undertakes tasks linked to infrastructure management, will have a direct interest in performing those tasks for its own gain and not in the interest of the whole railway system. Infrastructure managers should be fully empowered to respond to the needs of all users of the rail network and to plan network operations in the wider interests of the rail sector. Investment, planning, maintenance and operations, all the essential elements needed for an efficient management of the rail network, should be in the hands of one body, the infrastructure manager. Fragmentation of these responsibilities, as is currently the case in some Member States, undermines the quality and performance of the rail network.

ERFA opposes the European Parliament's weakening of the core tasks of the infrastructure manager.

ERFA opposes the European Parliament's removal of the independence of the infrastructure manager in performing all of its essential tasks.

3. Closer cooperation for all rail users via Coordination Committees

ERFA supports the creation of coordination committees to ensure that the network is developed in the interests of all the infrastructure users. The aim is to make infrastructure managers more market-oriented and guarantee that their infrastructure allocation, charging, maintenance and renewal policy meets the demand of all the users of railway infrastructure. This is a vital step forward in getting the railways away from the mindset that it is the dominant railway operator who sets the rail strategy. All users should have a right to be consulted and give input on the development of the network.

4. An open rail market for passenger operators via open access and greater competition in the domestic passenger market

ERFA welcomes allowing more market players to offer their services on the domestic passenger market. Just as experience has shown in the rail freight sector, greater competition can improve the quality of services to the benefit of customers. It can also lead to greater efficiency, a better match between services and passenger wishes and can incentivise innovation.

ERFA supports the establishment of open access in the domestic passenger market.

ERFA supports competitive awarding of public service contracts (90% of domestic rail passenger services are covered by public service contracts).

ERFA supports the establishment of limits on the size of public service contracts.

ERFA opposes the changes adopted by the European Parliament that favour direct awarding over competitive tendering.

In order to ensure that taxpayers' money is efficiently and effectively used to achieve public transport policy objectives, ERFA believes that greater transparency in the use of public funds is needed. This is to avoid funds being diverted away for the purpose of keeping other railway undertakings off the market and to ensure that public funds are directed towards the fulfilment of public transport policy objectives.

ERFA supports the establishment of public transport plans by the competent authorities in the Member States clearly defining public service obligations that have to be met by public service operators.

ERFA supports a clear separation of accounts for railway undertakings who provide public services and open access services.

ERFA supports greater regulatory body oversight over public service contracts

5. A rail market with favourable conditions for new operators

By providing transparent and easily accessible information about track access charges, available capacity and application procedures, the rail market must be kept accessible to new operators – both on the freight and passenger side, in order to ensure competitiveness and continued development of the sector.

ERFA supports a strong independent regulator with widely defined powers

ERFA supports that conflicting requests for capacity only take into account the contested market segment¹

ERFA supports fair and open access on an equal basis for all railway undertakings to rail-related facilities.

ERFA supports access to rolling stock for passenger operators running public service contracts by obliging Member States to provide a solution for non-discriminatory access to rolling stock. For freight operators this means access to terminals and all services provided within terminals. For passenger operators this means ensuring access to stations, platforms, retail ticket sales, a requirement to publish timetables with all services included, passenger information and rolling stock.

ERFA believes that rolling stock no longer required by incumbents and purchased effectively with taxpayers money should be made available for sale to other operators.

¹ In the event of conflicting requests for the very same market segment, IMs must have the obligation to take into account only the infrastructure segment disputed and not the entirety of the capacity requested, thus not by default favouring larger operators. In the event of a failure to agree, an appeal facility to the regulator is also important.