

## Position Paper on the EC's Fourth Railway Package

CLECAT is the Brussels based organisation representing the interests of freight forwarders, transport and customs related services in Europe. Neutral towards transport modes, logistics service providers are large users of rail freight services and, hence, important customers of railway undertakings. Aware of the fact that rail could and should play a more substantial role in the supply chain, CLECAT has been promoting a liberalised European rail freight market where full and fair competition takes place throughout the European territory.

The purpose of this paper is to express the expectations of industry, as users of rail freight transport services, on the new legislative package that the European Commission is preparing to address the current impediments to the establishment of a Single European Railway Area. CLECAT is of the opinion that the recently adopted 'Recast' has been a step in the right direction but much more needs to be done.

### Background

Strengthening the position of railways vis-à-vis other transport modes has featured prominently in the Commission's agenda over recent times and promises to be one of the most important transport policy objectives in the foreseeable future. In reality we have found that the market share of rail freight transport in Europe has remained at a relatively low percentage with an average of about 7% for freight. Within the context of the freight forwarding profession, any modal shift ambitions are only achievable if there are distinct enticements for users to switch from road to rail – that of efficient, reliable and sustainable services – possible only through increased competition and quality of services. To achieve this it remains imperative to push through the full implementation and revisions of all the rail packages to date, especially those that provide for open access to the rail network, allow for authorised applicants, split infrastructure management and ownership from those operating services, and remove barriers to competition.

Whereas legislation is there for a liberalised market in rail freight, some Member States have been slow to transpose EU rules into their national legislations, and still have a long way to go.

It is unfortunate that the current rail freight market is characterised by a **low level of competition** which is largely due to persistent discrimination in access to infrastructure and rail related services, thereby discouraging new entrants from entering national markets and offering cross-border services. This is a common occurrence, with many newcomers continuing to have denied or very limited access to freight terminals when no alternatives are available. Competition should be encouraged as it remains the driver for improved efficiency and performance and reduced costs and prices.

In general, **punctuality and reliability of services** have not improved and remain a complaint from users. At the same time, the **quality of infrastructure** is declining in many Member States because of inadequate funding, due in part to limited incentives for both public and private investment. This coincides with the un-harmonized technical cross-border conditions.

With this it should be noted that the severe economic downturn has equally led to a decline in rail freight. Whereas the rail freight market recovered relatively fast from the initial onslaught of the economic crisis, the current economic crunch is again hitting the sector. Nevertheless, users are convinced that there is a potential for growth in rail freight and there is an interest to capture many of the environmental and inherent cost benefits that an efficient and well managed rail freight service could deliver.

### **Recommendations for the Fourth Railway Package**

To achieve a competitive, efficient and transparent railway system that will become more attractive to customers, CLECAT will continue to call for: 1) Structural separation between Infrastructure managers and incumbent operators; 2) Reinforcement of the European Rail Agency; and 3) Creation of a European Rail Regulator.

#### **1) Governance of the Rail Sector: structural separation**

CLECAT seeks for a governance of the rail freight sector whereby the rail network provides for non-discriminatory access to services operated by Infrastructure Managers (IM) who are independent of any Railway Undertaking (RU). This is a model that is also applied by other modes of transport where the provider of the services is totally independent from the public party that is in charge of the infrastructure. CLECAT is of the opinion that it provides for a level playing field across the modes. In that regard, we offer the following comments:

- **The independence of the IM** would allow it to have control over its essential functions, including its entire revenues and expenses, and make the IM fully reliable and responsible for the quality and scope of the services provided to its customers.
- **Generic and comparable business models of IM governance** should allow for future benchmarking amongst IMs and an efficient organisation of European freight corridors. The key criteria to guarantee this relate to efficiency, performance, accountability, transparency and non-discrimination.
- **Reporting requirements for key indicators.** Member States, through their Regulatory Bodies, must be required to publish important statistical data on activities of incumbents vis-à-vis other operators, in terms of such important indicators as the percentage of traction capacity controlled by incumbent vs. others, average track access charges for incumbent vs. others, and the ratio of granting/rejecting applications for access to train paths of incumbent vs. others.

Against the background of developments in some EU Member States,<sup>1</sup> CLECAT expects the Commission to be forceful in bringing about the genuine separation of infrastructure from operations. The intention of the first Railway Package has been to create the legal framework against which liberalisation can take place; this required the separation of the operation of rail freight services from the infrastructure management and ownership.

From CLECAT's perspective, separation is not an end in itself but a means to encourage competition. The integrated holding models in the rail sector often entail privileged 'ownership-type' relationships between the incumbent undertaking and the infrastructure managers. In this business model it is often hard to make objective decisions when demand exceeds supply or capacity, since IMs are bound to give preference to their own operator's business interests over that of competitors.

The recent opinion of the ECJ Advocate General on actions of the Commission against Germany and Austria in respect of "incomplete or incorrect transposition" of the Directive also shows that there is a need for more legal clarity.

The separation of the IM from the Railway Undertaking (RU) would represent the quickest and most efficient way of revitalising the industry and creating a level playing field between rail operators.

## 2) Reinforcement of the European Railway Agency (ERA)

The ERA plays a vital role in promoting interoperability and harmonising technical standards between Member States' railway systems; however, its functions vis-à-vis National Safety Authorities and National Accident Investigators need strengthening. CLECAT fully supports any additional or enhanced powers for the ERA in the 4<sup>th</sup> Railway Package. CLECAT believes that a reinforced ERA would be able to:

- **Establish a one-stop-shop approval process:** Approval procedures for railway rolling stock (e.g., locomotives) can be extremely lengthy and costly within every Member State. This significantly impedes the creation of a Single European Railway Area and adds unacceptable additional costs for operators. A one-stop-shop type of approval of railway rolling stock certified across the Single European Railway Area is needed.
- **Monitor implementation of legislation of National Safety Authorities (NSA).** Given the proper mandate, the ERA could apply preliminary control of implementation legislation and ensure NSA independence.
- **Act as an appeals body for NSA decisions:** ERA would be best placed to handle appeals to an NSA decision because of its neutrality, and disconnect from national rail sector interests.

---

<sup>1</sup> Reference is made to the French Government's proposals (30-11-12) to restructure French railways, bringing infrastructure manager RFF and incumbent operator SNCF into a single organisation. The new structure creates a holding company (GIE) which will effectively control infrastructure management through a 'Groupement d'Infrastructure Unique' (single infrastructure group) which will manage the infrastructure, the timetable (through an SNCF subsidiary) and with SNCF Infra the maintenance and renewals of the network.

### 3) Creation of a European Rail Regulator

The proper regulation of Europe's rail sector is imperative to the prospect of facilitating a well-functioning, competitive, and integrated Single European Railway Area. However, this would not be feasible under the current heterogeneous European regulatory environment, with national regulatory bodies not only holding divergent capabilities, influence and powers of enforcement, but also varying in their degrees of independence and transparency when they do yield such powers. CLECAT has on various occasions called for the establishment of a European Rail Regulator that would organically complement the current piecemeal regulatory system, resulting in the reinforcement and genuine independence of national regulatory bodies. In particular, a European Rail Regulator would be well positioned to:

- **Monitor implementation of legislation:** A European Rail Regulator could help in the monitoring of the implementation of rail legislation across Member States and help oversee issues of a cross-border nature; the European Commission is currently ill-prepared to face such challenges due to inadequate resources. The European Regulator could also support the monitoring of competition within the rail sector.
- **Harmonise charge calculation methods:** Current rules allow for a wide variety of charge calculation methods for Member States in developing track access charges. A European Rail Regulator could help lead to harmonised charging principles by assisting national regulators' work by issuing guidelines on the interpretation of such concepts as market segmentation, noise surcharges, ERTMS discounts, etc.
- **Facilitate communication between national regulators.** National regulatory bodies need a forum of communication whereby they may exchange approaches and best practices for dealing with regulatory issues. A European Rail Regulator could help facilitate such dialogue through a general assembly or by means of working groups.

The creation of an EU level regulatory body in the rail sector would dramatically compliment the work of the Commission and ensure more coordinated and transparent regulatory enforcement across Europe.

### Conclusion

Aware of the fact that rail can and must play a more substantial role in the supply chain, CLECAT believes that the drive to full liberalisation of the rail freight sector remains a priority. CLECAT is of the opinion that the main objective of the 4<sup>th</sup> railway package is to enhance the quality of rail services, through better performance and fair competition and open access. Hence, the European Commission should address the remaining obstacles which have been addressed in this paper. CLECAT remains at the disposal of the European Commission and any other interested parties for any further information about our views on the upcoming Fourth Railway Package.