

4th Railway Package issued by the Commission on 30/01/2013
FIRST COMMENTS on the
DRAFT REPORTS issued by the TRAN Committee's Rapporteurs

Preamble

These first comments of ERFA are based on the ERFA position paper (rev.7 – 01/05/2013) on the 4th Railway Package issued by the Commission on 30th January 2013

With our comments here-under on the proposal for passenger market opening and the governance of the railway infrastructure, ERFA expects to feed the exchanges of opinions and debates on the subject in the next TRAN Committee meeting of 8th and 9th July. After the position of the Committee and the issue of the reports, ERFA will certainly be in a better position to suggest more precise amendments.

Proposal for a directive amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services and the governance of the railway infrastructure / COM(2013) 29

Draft report of the Rapporteur Saïd El Khadraoui

ERFA General Comments

Through the several amendments proposed by the Rapporteur, **ERFA welcomes:**

- The complements and clarifications introduced in the recitals (5, 6a new, 13a new (but, is it the best place?), 19d new)
- The possibility for a IM to benefit from the expertise of a railway undertaking for specific tasks (art.7 – 4a new) but :
 - By subcontracting (which means first a call of tender) and not by “cooperation agreement”
 - The regulatory body has to be consulted (> action ex-ante)
 - The Coordination Committee has to be informed (ex- ante) of the decision to call for subcontracting
- The approval by the regulatory body for changes in charges (art.7a – 5a new) but the Coordination Committee could also be informed and questioned ex-ante.
- The proposal to improve the cooperation between corridors (art.7e – 1) with involvement of the Agency and NSAs.

- The proposal to define a first set of pre-determined criteria to assess the economic equilibrium of PSC (art.11 – 2,1)

And ERFA expresses reservations regarding:

- Some complements introduced in the recitals
 - 19e new: Do we have “to ensure that railway workers are appropriately protected against”? We think No! The opening of the market will automatically create a market for the workers able to offer their services to several actors (companies) interested by their mobility, flexibility and expertise (specialization and/or polyvalence).
 - 19f new: Do we have to mention CER and ETF? We think No! CER is not at all exclusively representing the railway sector.
 - 19g new: The collective agreements are not always representative of the market reality. An addition of different national or sectorial collective agreements is not at all helping lean, seamless, efficient cross-border traffic. ERFA stays in favor of a collective agreement on the European level including all market actors and not only the national historic operators.
- The proposal of a “cool off period of 3 years” even for “any other railway undertaking operating on the network ...” (art.7b – 4). The purpose is clearly to avoid a conflict of interest by staying in the integrated group and not leaving for another job in any other RU in an open market which is usual, happens already now and creates rewarding mobility and valuation of expertise for the workers or the staff.
- The proposal to allow the common development of IT system in an integrated group (art. 7b – 5). It’s too difficult and will anyway continue to create suspicion as it is already the case now. In addition it will oblige the regulatory body to develop a very high specialized expertise in IT system to be credible which is not at all its main task and will create anyway administrative burden. The easiest and soundest way is the total separation of IT and accounting systems.
- The proposal to enlarge the membership of the Coordination Committees to the railway sector’s workers (art.7d – 1).
- The proposal – in case of conflicting requests for path allocation – to refer to art. 46(4) (art.7d 2e). It has to be redrafted because with the present formulation it could create discrimination towards international paths request.
- The proposal to apply to any new undertaking the respective representative national collective agreements in the passenger market opening (art.1 – 7a new). See here-above the ERFA consideration and reservation.
- The rendez-vous clause of 31 December 2024 to evaluate the impact of the Directive (art.63 – 1,1). ERFA would prefer an accompanying process of annual evaluation starting immediately with the entry into force of this directive.