

17 February 2014

POSITION PAPER

4th Railway Package

**Before the plenary session of the European Parliament,
ERFA strongly asks MEPs to reject the last additional amendments
(regarding the governance of the railway infrastructure COM(2013)0029)
suggested by CER on 11th February**

See the CER suggested amendments here-after all to be rejected because they completely “destroy” the compromises reached by the Rapporteur Saïd El Khadraoui and voted with a comfortable majority in EP TRAN Committee on last 17th December.

- **Art.7a(4)** – The CER proposal takes out the crucial word "only" - TO BE REJECTED
« The IM shall raise funds on the capital market **only** independently and not via ...”

Why does it have to be rejected?

If the CER amendment is accepted vertically integrated undertakings (VIU) would be allowed to raise funds on the capital market via the holding. Once this happens, no one would be able to trace back where the money actually goes. The Holding could claim "interest" on such loans which it claims to have given. This means the Infrastructure Manager (IM) would have to use its revenues to pay for this "interest". This is precisely one of the problems the 4th RP aims to address.

- **Art. 7a) 4a (new)** – Enable infrastructure manager to accept donations/grants from railway undertakings (RUs) – Amendment TO BE REJECTED

Why does it have to be rejected?

Because if the RU gives such "donations" it will of course expect something in return. The IM will become « dependent » of the RU offering such financial donation ... and which RU would be in a position to do so? Only the incumbent will be financially able to give such support, which will create discrimination towards other railway undertakings.

- **Art. 7da (new)** – Allow alliances also in case of integrated structures – Amendment TO BE REJECTED

Why does it have to be rejected?

The TRAN text has to be kept. If not, it opens the doors to a lot of possible discriminatory measures to give applicant incentives other than the controlled and transparent reduction of track access

charges. Also this amendment does not make sense. Why should there be an increase in revenues of the RU if the IM has savings because of the cooperation agreement? It is the IM, and not the RU which will make savings in the infrastructure, and they may be reflected in the charges. It cannot be allowed that there are in-transparent payments between RU and IM, which can create potential for discrimination with other RUs.

- **Art.7a (3) (modified)** – Amendment on earmarking of dividends - TO BE REJECTED

“The IM incomes may only be used in order to finance the business of the IM **and to pay dividends** to the ultimate owner ”

Why to be rejected?

Because there is no legal possibility to earmark money from dividends to the State for recycling in the infrastructure, this would run contrary to the budget prerogatives of Member States. Therefore this amendment does not make sense.

- **New recital on the role of the holding** – Amendment TO BE REJECTED

“The holding company may contribute to strategic decisions necessary for the good functioning of the railway transport system as a whole”

Why to be rejected?

Because in this amendment the holding is substituting the State (the ultimate owner), what is not acceptable in an open market. It is the State which has to take care of the industrial and transport policies as a whole and not the incumbent.

- **Art. 7b.1** – Amendment TO BE REJECTED

“... the infrastructure Manager (IM) shall have effective decision-making powers **to train path allocation and infrastructure charging**”

Why is this to be rejected?

Because there was a clear agreement that the IM has to have effective decision-making power on ALL the functions referred to in Art.3(2). All these functions are important to ensure the independence and non-discrimination (e. g. also investment decisions may have an impact on non-discriminatory market access). This is an unacceptable set-back even before the recast of the 1st RP.

- **Art. 7b.3** – Amendment TO BE REJECTED

“The IM **may** have a Supervisory board Also including representatives of the staff of the IM ...”

Why should this be rejected?

Because other representatives coming from the IM could not be totally independent.

- **Art. 7b.5** – Amendment TO BE REJECTED

“The IM shall have its own **management** staff. **Sensitive information** ...”

Why should this be rejected?

Because important items are not mentioned any more: separate premises, ... ensure the independence ... Most importantly, the regulatory body's role is weakened (**may** and not shall)....

- **Art.7b.6** – Amendment totally TO BE REJECTED

“The IM shall have the necessary organizational capacity to perform its functions”

Why should this be totally rejected?

Because it replaces the sentence “ to perform ALL OF ITS FUNCTIONS INDEPENDENTLY”. It is therefore a very clear signal from CER to foresee a strong limitation of the IM's functions and of course its independency!

- **Art. 7b. 7a (new) and new recitals** – Amendment TO BE REJECTED

“Member States **may** request the regulatory body to produce guidelines + new recitals to be added: (xa) The regulatory body **may** produce guidelines on the enhancement of the independence of the staff and management of the IM within a vertically integrated undertaking with respect to train path allocation and infrastructure charging

Why to be rejected?

Because “**may instead of shall!**”. Member States **have** to request the regulatory body to produce binding guidelines, if not, there is no more any protection of independence of IM with ALL its functions. MEMBER STATES WOULD AGAIN BE FREE TO DO WHAT THEY WANT. Member States which want to keep holding structures with full control of the holding over the IM could do this. The initial sentence “The regulatory body should immediately after the entry into force of this directive produce binding guidelines on the enhancement of the independence of the IM” has to be kept! If the guidelines are not binding, or the decision on guidelines is left to Member States, we do not have any progress at all.

Contacts:

ERFA (European Rail Freight Association) was set up with the 1st Railway Package in Brussels in July 2002 to represent the interests of the new independent and private 'open access' rail freight operators. ERFA is EU Representative Body. Today, the association comprises 30 members (21 rail freight operators, wagon keepers, service providers, forwarders as well as 9 national rail freight associations) from 16 countries in wider Europe. ERFA represents more than 800 locomotives and 55.000 freight wagons. ERFA's main objective is to make the rail freight market fit for competition so that rail freight can expand its market share, attract new investments, become more innovative and create jobs. By doing so, ERFA contributes to a highly competitive EU rail freight market.

ERFA's key mission to achieve its objective is to remove all legal, technical, social and administrative barriers that prevent its members from rapidly establishing international cross-border freight services, using all rail infrastructures regardless of who manages them, and to encourage any developments likely to enable all rail companies to flourish on this market, regardless of their size or age.

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