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POSITION PAPER ON THE 4th RAILWAY PACKAGE

INTRODUCTION

ERFA was founded in 2002 with the 1st Railway Package (RP) welcoming the pioneers of the cross-border rail freight traffic. The objective of our Association is “to promote European rail freight transport and its stakeholders through the complete opening of the market”. In such a fully liberalized and transparent single market, our members can compete fairly with other operators and, as a result of this competition, grow the volumes of freight carried by rail.

Our credo stays: Satisfied customers with a lean, seamless, efficient cross-border rail freight traffic in a fully open single market.

Today, ERFA’s members cover almost all aspects of the rail freight business: independent Railways Undertakings (RUs), operators, logistic companies, wagon keepers, leasing companies, service providers and national rail freight associations. ERFA represents 8 associations and 22 companies (having created more than 10.000 new jobs in the last 6 years and managing more than 800 locomotives and 55.000 wagons).

ERFA is a European Representative Body, totally in line with the European development and its railway’s reforming policy and objectives clearly expressed in the transport White Paper of May 2011.

Nevertheless, **ERFA considers** the market liberalization still has a long way to go. Indeed:

- a. During the last 6 years, ERFA introduced 30 complaints against market entry and/or operational barriers leading to infringements procedures of the European Commission against Member States.
- b. The Recast of the 1st RP took 2 years debate and will only be implemented by Member states within the next three years. That means we have already lost a period of 10 years in the essential liberalization of the European Railway System since the First Railway Package, a very long period for independent RUs to sustain in competition with public funded incumbent RUs and their retaining influence and control of many essential functions.

Ten years later, our objective is more than ever crucial. We are indeed still facing:

- a. High efficiency and competitive prices requested by the customers
- b. Risk of economic stagnation and scarcity of public and private funding
- c. Sophisticated problems of un-harmonized technical cross-border conditions
- d. AND last but not least, too strong influences of some Member States and their incumbent RUs to
 1. Return to or stay with the integrated model instead going forward with the EC objectives and to
 2. Favoring the model of each member state having its own structure of choice rather than a single European Rail Area

ERFA regrets the present European Railway System stays very complex, capital intensive, costly and low performing, as well as being slow with regard to technical harmonization and still too much influenced by incumbent monopolistic culture.

That is why, of course, **ERFA has welcomed** the conclusion of the Recast of the 1st RP and has worked hard with the European Commission, European Parliament and other representative bodies to improve the structure of the railways, its regulatory framework and the transparency.

From the evidence of our members across Europe, more needs to be done, and that is also why **ERFA welcomes** the Commission's proposal to introduce a 4th RP later this year.

The Commission and member states clearly want to encourage private investment in the railways. In the freight and infrastructure sector, this already happens in some member states with investment in rolling stock and terminals. With restrictions on state funding, the availability of private sector funding will be one of the main drivers of growth. However, private funders do need a consistent, reliable and fair structure in which to operate, with limited risk of business failure due to actions by governments or their incumbent RUs, many of whom seem to have access to large amounts of public money at lower rates of interest.

ERFA company members generally come from the private sector and therefore need the structures and changes summarized in this paper to enable the private sector involvement to grow. This paper sets out the issues which ERFA seeks to be included in the 4th RP both in respect of the structure and legal framework of the railway system, on changes to the European Railway Agency and on social issues.

THE OPTIMAL INFRASTRUCTURE MANAGEMENT FOR THE FUTURE

ERFA seeks a lean, seamless and efficient European rail network with both absolute non-discriminatory access to it and rail related services, operated by Infrastructure Managers (IM) who are totally independent of any RU.

Experience up to now show that member states and their incumbents have obstructed, delayed or failed to implement legislation in such a way that new entrants and independent RUs have lost confidence in receiving fair treatment whilst there is a close relationship between incumbent RUs and their related IMs.

ERFA is supporting a fully-fledged IM, having ownership and/or control over all functions – becoming essential - which directly or indirectly have impact on the business of ERFA's members. The objective of such an approach would be to allow the IM to control its entire revenues and expenses and make the IM fully reliable and responsible for the quality and scope of its services provided to its customers. ERFA's main criteria are efficiency, performance, accountability, transparency and non-discrimination.

Thus, ERFA needs a clear legislative framework to achieve:

- a. The total independence of the IM together with all the essential functions for the path allocations, the real-time operations (traffic management) and for maintenance and development of the network. Some of these essential functions can be outsourced, for example:
 1. Maintenance, track renewal and infrastructure upgrade
 2. Private maintenance workshops on railway land
 3. Various consultancy work
- b. An efficient European freight corridors organization (easier to achieve with the IM's total independence) where the needs of international traffic take precedence over national ones.
- c. Flexible and non-discriminatory access to paths and totally open access to rail related services managed and owned independently of RUs.
- d. The transfer of such historic operator owned property having been publicly financed (e.g. railway land, terminals, sidings) to the IMs to allow open access to these and the essential services therein on the same basis for all RUs (even if under certain circumstances some facilities may be leased to RUs or sub-contracted to other bodies)
- e. Encouragement's measures towards environmental friendly energy

- f. A “customer oriented” organization of the IM allowing the RUs, as direct stakeholders, to:
1. Participate in the preparation of the long term planning and of the annual business plan
 2. Participate to the process of investment decisions and their priorities with special attention to preservation of land’s investment to railway use
 3. Review together the framework contracts of access to the network and its facilities to incentivize (bonus and malus) cooperation between parties
 4. Participate with the public authorities to the determination and the monitoring of the best Key Performance Indicators (KPI) to be applied towards IM, being a public Monopoly
 5. Participate in the real time operations by quarterly follow-up meetings organized by IM with all RUs and covering the main aspects as:
 - 1) Report on the traffic management main events
 - 2) Failures and faults in the safety and signaling procedures and equipment
 - 3) Quality of the communication between drivers and IM
 - 4) Permanent adaptation of the timetabling by the ad hoc / last minute paths
 - 5) Forecasting of track-works and rerouting of itineraries on national level but also between different IMs parts of a European corridor
- g. Totally independent, arbitral and efficient Regulatory Bodies (RB) with a comprehensive range of responsibilities, including :
1. The duty to investigate costs and other financial details of the IMs and enforce efficiency savings. This must also include the RB’s ability to investigate financial flows inside groups that remain integrated.
 2. The possibility for on-site inspections to control the opening and access to Rail Related Services
 3. The market investigation and fast resolution of complaints at a national level.
 4. The possibility of appeal at international level to the Commission (e.g. complaints on interoperability dis-functioning, on excess requests from foreign NSAs)
- The role of the RB should also be to encourage more rail freight traffic.

ERFA came to the conclusion that the easiest, simplest and cheapest way to assure fair competition and growth in the rail freight sector is through the total separation of the IM from RU. ERFA recognizes that – apart from the core network – the structure and business models of smaller integrated groups and companies have to be taken into account in this new framework.

A NEW ROLE FOR THE EUROPEAN RAILWAY AGENCY (ERA)

There is a need to create a truly integrated European market with free movement of rolling stock and with coherent and harmonized safety organization of RUs. This will reduce time – to – market and consequently costs. To achieve this, **ERFA believes** that the role of ERA needs to be strengthened and ERA to become the single European Systems Authority.

New entrants but also incumbents operating across borders need harmonized processes and identical procedures for vehicle authorization and RU's safety certification all over Europe. ERFA and other main representative bodies have therefore issued a common position for the new role of ERA (see our Website www.erfa.be in position/publication section 10/07/2012).

The empowerment of ERA

ERFA welcomes the EC's proposals clearly expressed in the Conference "The last mile towards the 4th Railway Package" giving enhanced tasks and empowerment to the Agency by

- a. Strengthening the control of ERA over the functioning of NSAs and
- b. Organizing the sharing of competencies with the NSAs by clearly splitting the responsibilities
 1. The instruction and certification /authorization by ERA and
 2. The control in the field by the NSAs

For ERFA, empowering the Agency means also:

- a. ERA has to become a federal organization supported by decentralized national or multinational offices, coordinating, harmonizing and arbitrating the NSAs works

In this context, **ERFA asks** for:

1. As lean as possible organization for ERA with a managing board and an advisory council of representative customers and stakeholders where exchanges on valuable return of experience could be incorporated
 2. A very efficient partnership with NSAs which will be reinforced by a new Joint Network Secretariat to avoid duplication and burden of bureaucratic work
 3. An efficient and harmonized operation taking into account existing local knowledge and rules
- b. ERA has to organize the elimination of unnecessary national technical and safety rules and to replace them by Technical Specification of Interoperability (TSIs) and by a harmonized application of the interoperability and safety directives

ERFA asks the EC to:

1. Speed up the process of convergence between ERA and NSAs
2. For the ERA and NSAs to focus not only on safety but on interoperability as well, taking into consideration the need to develop a competitive European railway system.

For the single authorization for vehicles and subsystems, ERFA asks for:

- a. Clear responsibilities and deadlines for the 31 recommendations elaborated in the report of the EC/ERA task force on railway vehicles authorization (see our Website www.erfa.be in press section 12/07/2012)
- b. The setting up of the new concept of “European vehicle passport” listing the technical characteristics of a vehicle
- c. A more efficient Placing into Service (PIS) process, to be taken by the applicant instead of the NSA and based on checks foreseen in the TSIs
- d. Invite IMs to deliver regular update of their network and to establish as soon as possible harmonized maps and Registers of Infrastructures (RINF)
- e. Better control and monitoring of the Notified Bodies/NB Rail by ERA

For the single safety certification of RUs, ERFA asks for:

- a. A shortening of the migration plan and delivery targets for RUs
- b. The RU’s controls on the field by NSAs to be made in common agreement and with recognized criteria to limit negative impact on the RU’s productivity
- c. An ERA training program for SME’s and new entrants for the application of the Common Safety Methods (CSMs) for risk evaluation and assessment
- d. The possibility of choice for an RU’s to apply either by ERA or by an NSA for the safety certificate
- e. A regular sharing of Return of Experience from NSAs by ERA organizing business cases seminars for RUs

For the ERTMS, ERFA asks for:

- a. Installation of ERA as European System Approval Authority

- b. Extension of the ERA mandate to better coordinate, certify, check the call of tenders and answers and approve ERTMS on-board equipment
 - 1. Essentially for the implementation of baseline 3
 - 2. But also for interoperability with baseline 2.3.0.d
 - 3. For the general stability of the system
- c. Listing of geographical and/or technical hardware/ software incompatibilities by ERA
- d. Certification of all on-board equipment by ERA
- e. Assisting the EC in the organization of ad-hoc financing solutions for the upgrading or renewal of on-board equipment - especially for SMEs and new entrants subject to small series and consequent higher costs. The on-board equipment accounts for 10 to 20% of the global cost, and should be financed as part of the IM's installation costs since it is the IMs who benefit from the additional capacity and the elimination of signaling maintenance costs created by the ERTMS installation. This is a very important issue for ERFA members who expect that SMEs should not be disadvantaged by the introduction of ERTMS.
- f. A consequent reinforcement of the ERTMS coordinator's missions

For the TAF TSI, ERFA asks for:

The support of ERA to train and inform SMEs and new entrants on the needed development of ad hoc software tools which will communicate with the Common Component already developed in the frame of the present TAF TSI deployment plan.

In conclusion for the ERA's new role, ERFA is willing to support actively the objectives and contribute to reach the following results:

- a. Most importantly, the existing generally sufficient European legal framework is not fully implemented in many EU Member States; The EC must take urgent and comprehensive infringements proceedings to – amongst others – gain the most benefits once the role of ERA is strengthened.
- b. ERA – in all these roles - should take particular account of the needs of SMEs and new entrants.
- c. ERA must, in the future, be transparent, easy to understand and robust especially in terms of milestones and ensure fair and transparent ongoing communications with and between IMs, RUs and ECMs.

- d. Finally, ERA must work stronger on economic cost benefit analyses, particularly of technical standards, so that they are affordable to the sector and create added value for all in terms of time, processes and money.

CONCLUSION

The Fourth Railway Package provides the opportunity to finally create the long awaited single European Rail Area which will enable rail freight to compete with road freight.

An arrangement where each member state is allowed to have its own structure, with different essential services allocated to the IM and different relationships between the IM and the incumbent RU, can only result in a retreat to incumbent dominated national rail systems, with private RUs being unwilling to take the financial risk in operating across borders in such a disorganized arrangement.

ERFA members expect the European Commission to come up with strong, clear and ambitious legislation so as to provide a comprehensive and stable model, thereby avoiding a constant restructuring of the market actors, and allowing all to finally focus on their core businesses and create the growth that is so important.