

***DRAFT* POSITION PAPER on the 4th Railway Package issued by the Commission on 30/01/2013**

• **Introduction**

ERFA represents private companies and associations of the rail freight sector. ERFA – as EU Representative Body - issues the present contribution to the legislative process based on its operational market experience and its knowledge of stakeholders. The present paper focuses on interoperability and safety as well as on governance and the independence of IMs.

ERFA welcomes the publication of the 4th Railway Package in its entirety. The Commission proposals are timely as the rail sector needs to engage in structural reforms to deliver growth, jobs and efficient solutions for EU companies and a better quality of service.

ERFA shares the Commission's perspective on the challenges and solutions to establish a Single European railway Area as set out in the Communication introducing the package (COM(2013)25). In ERFA's view, the Commission provides a well-balanced description of the problems affecting rail performance:

- lack of market opening,
- remaining barriers for new entrants,
- persisting discriminatory practices in operational terms,
- existing financial flows in integrated groups which distort competition by cross-subsidizing rail transport operations,

In order to address these challenges, the Commission proposes several new measures and safeguards to finally eliminate outstanding obstacles.

The proposals focus on four keys areas:

1. Interoperability & safety: improved standards and simplified authorisation and certification procedures
2. The governance structure of the rail system and the independence of Infrastructure Managers
3. Domestic passenger market opening
4. Social aspects

In all these areas, the Commission continuously pleads in favour of better access for new operators.

- **Interoperability and Safety**

The 3 new “technical” proposals concentrate on:

1. The enhanced role of one stop shop for the Agency in cooperation with the NSAs
2. The issue of EU wide vehicle authorization
3. The issue of EU wide safety certificates for RUs
4. The widening of the TSI scope and the drastic reduction of national rules
5. The Agency role in the facilitation of the ERTMS deployment

After a close analysis of the proposals, ERFA welcomes the following aspects:

Concerning administrative and organisational aspects

- The additions and clarifications in articles “definition” in the interoperability and safety directives
- The new objectives and numerous tasks for the Agency and their reinforced control over NSAs
- The extended competences of the Agency Board and of the new Executive Board

Concerning interoperability and the authorisation process

- The new EU level authorisation for placing on the market of vehicles
- The set-up of a register of authorisations to place vehicle types on the market that will be kept by the Agency.
- The transitional regime for the placing in service of vehicles.

Concerning safety

- The clarification of roles, risks identification and safety responsibilities of all actors
- The single certification process shared between the Agency and NSAs

Concerning the monitoring process

- The new detailed obligations of notified bodies

Concerning TSIs and national rules

- The drastic decrease of national rules with the off-TEN-T TSIs application in 2014
- The reduction of exceptions as regards the non-application of TSIs and strict justification if national rules are kept
- The TSIs enabling RUs to check compatibility between vehicles and routes

Concerning ERTMS

- The new role of the Agency as a System authority for ERTMS ensuring
 - technical and operational compatibility of networks and vehicles with different versions and compatibility with earlier versions
 - assistance to RUs regarding compatibility issues before the placing in service of vehicles

Despite these positive elements, the proposals contain outstanding issues that need clarification. Therefore, ERFA expresses reservations concerning:

- How and when the dedicated “application guidance documents” will be issued and what will be their detailed content?
- The extent of the authorization process to be performed by the RUs for the technical compatibility of vehicles at national level for the placing into service. ERFA strongly believes that the authorization of the new vehicles must be managed by their manufacturers and not by the RU's. Only minimal final checks (compatibility between the vehicle and a dedicated route) must be performed by the RU.
- The new role of NSAs and reallocation of responsibilities between them and the Agency
- The new role of the NSA in the single certification process obliging the RU to document the NSA
- The still possible issue of a national rule
 - for essential requirement respect (open points or description of existing system)
 - or for preventive measure following an accident
- The uncertainty regarding new resources to match ERA's new responsibilities
- The inflation of the Agency Working Groups (already today +/- 60!) which asks too much resources to stakeholders to participate and bring substance particularly for smaller operators
- The still too bureaucratic placing in service authorization process in addition to the market authorization ones: the burden of the proof on the RU' shoulders. Is this really an improvement?
- For national rules (in draft or already in force), the burden of proof lies with the Agency instead of the Member State
- The absence of timing for the harmonisation and interconnection of National Vehicle Registers
- The absence of timing for the operating modes of infrastructures registers needed for the placing in service authorization.

Finally, ERFA insists that a strong empowered Agency is needed to

- Really contribute to achieving the cross-border European rail reform
- Become THE European Rail System Authority and not “a single administrative one-stop-shop”, but rather a real “operational Competence Centre” fed through cross-fertilization by the permanent rotation of seconded national experts coming from the NSAs. This form of cooperation will allow ERA to better understand and address national specificities.
- Address cross-border and/or national applications for authorization/certification processes. ERA has to be the sole authorization/certification Authority. An applicant should not be entitled to choose.
- Harmonize and limit national rules as best, fast as possible
- Build a real European railway safety level and avoid Member States' safety level.

- Deliver, in a coordinated manner, the applications guidance documents essential to solve the technical particularities.
- Use common European verification methods of line compatibilities between all IMs

- **Infrastructure governance**

The proposal pursues the following objectives:

1. Improve the efficiency of infrastructure management by extending the functions of IM
2. Guarantee equal access to the infrastructure by securing the independence via structural separation by default.
3. Enforce the appropriate mechanisms (Chinese Walls) to ensure independence of IM also within vertically integrated undertakings
4. Promote the necessary cooperation between the IM and the users by introducing the Coordination Committee
5. Encourage the relevant cooperation amongst IM at EU level in the European Network of IMs

ERFA supports the general goals and means identified in the proposal on governance. More particularly, we are in favour of the following aspects:

- the extension of the IM's functions to development, operation and maintenance of the infrastructure
- the requirements relating to the independence of Infrastructure Managers from Railway Undertakings and the acknowledgement that full separation is the simplest, most efficient and less costly way.
- The provisions guaranteeing the independence of IM in the case of vertically integrated structures:
 - The prohibition of distortive intra-group financial flows
 - Strict independence in supervisory and management board, and of senior staff members
 - Clear operational separations with regard to premises and IT systems
 - An effective verification mechanism for these independence requirements by the Commission.
- Coordination Committees for each network allowing users to make proposals and request relevant information for maintenance and works, investments and development, charging, allocation and priority rules, etc
- The development of the European network of IMs allowing for their cooperation and the implementation of the core network, freight corridors and the ERTMS deployment plan with a coordination role of the Commission

ERFA expresses reservations regarding:

- The possibility for Member States to maintain vertically integrated structures. ERFA believes that separation remains the best way to enhance equal access to infrastructure
- The fact that the verification mechanism can only be activated by the Commission or a Member State. ERFA supports the extension of this mechanism to national regulators, operators and users.
- The new “rendez-vous” clause of 31 December 2024 allowing the Commission to assess the persistence of discriminations or competition’s distortion of vertically integrated structures (art. 63.1) The new rendez-vous clause should be 31 December 2020
- The fact that small integrated structures are not being exempted.

- **Conclusion**

ERFA is pleased that many of the recommendations and expectations - expressed in its paper of 12 October 2012 - regarding the content of the 4th Railway Package have found their way into the Commission’s proposals. ERFA remains therefore convinced that the Commission’s objectives are in line with European Union requirements pertaining to the free circulation of persons, goods and services.

ERFA is nevertheless extremely worried about the temptation of some Member States or key market players to delay the discussion on the market and governance aspects of the proposal.

ERFA strongly believes that railways represent a system made up of interrelated components and the 4th Railway Package mirrors this aspect as none of its elements can be tackled separately. For instance, the railway system cannot be performing with interoperability only while its governance model still needs to be fixed.