

**Communication from the Commission on the Fourth Railway Package COM (2013)25  
Completing the Single European Railway Area to foster European Competitiveness and Growth**

CLECAT is the Brussels based organisation representing the interests of freight forwarders, transport and customs related services in Europe. Neutral towards transport modes, freight forwarders are large **users of rail freight services** and, hence, important **customers of railway undertakings**.

**Executive Summary**

CLECAT welcomes the Fourth Railway Package presented by the Commission on the 30<sup>th</sup> January 2013 which aims to address the following weaknesses in the rail market, as also identified in the Commission's White Paper on Transport<sup>1</sup> (2011);

- Unfair competition in the rail market/persisting discriminatory practices
- Weak regulators/oversight by authorities
- Lack of interoperability due to different legal and technical standards

The Fourth Railway Package should, when fully implemented, enhance the quality of rail services through better performance, fair competition and open access in a true internal market for rail services. Since all parts of the package are interrelated, CLECAT would want to underline the need for the legislative package to remain complete and integrated.

CLECAT has carefully reviewed the proposed measures regarding separation between infrastructure managers and railway undertakings. In this regard we regret that the Commission has stepped back from imposing vertical separation as the only structural model for rail undertakings. As a second best option CLECAT largely supports the main proposals that impact on the freight market:

**Unfair competition and weak regulators**

- Mandatory legal and financial separation of Infrastructure Managers (IM) from Railway Undertakings (RU)
- Prohibition of financial transfers between IM and RU in case of remaining integrated companies (Chinese walls)
- Stronger supervision by national regulators, harmonisation of governance by national regulators

**Interoperability: Introduction of common, EU-wide legal and technical standards**

- Standard gauge mandatory for all new track lines
- ERTMS as common safety system
- Only one homologation process to be recognised in all other Member States
- Strengthening the role of the European Railway Agency
- Common rules for certifying railway companies

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<sup>1</sup> Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system COM (2011) 144 final

## Background

Aware of the fact that rail could and should play a more substantial role in the supply chain, CLECAT has been promoting a rail freight market where full and fair competition takes place throughout a single European railway area. Unfortunately, rail freight transport in Europe continues to fall far behind its potential.

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. There are many examples on this, newcomers continue to have denied or very limited access to freight terminals while no alternatives are available. Competition should be encouraged as it remains the driver for improved efficiency and performance and reduced costs and prices.

Freight forwarders, as freight customers, have limited choice because of few newcomers in the market, in particular in cross-border services. Incumbent railways largely remain in control of the market. **Excessive red tape** in the market entry process has been identified as being particularly acute for new RUs, as this category of operators are more vulnerable to complexity and delays in procedures. Service quality still remains the main weak point of rail freight transport. There is large scope for improvement in reliability, interoperability and smoothness of operation. In short, inefficient organisation, lacking cross-border interoperability, and restricted access to the market have resulted in a decline of a large part of the rail freight in Europe<sup>2</sup>.

With this background, the Commission is proposing measures to encourage more innovation in EU railways by opening EU domestic passenger markets to competition, as well as substantial accompanying technical and structural reforms. CLECAT would like to give some further details on the following areas:

### One stop-shop for Standards and Approvals

- Currently rail authorizations and safety certificates are issued by each Member State. The patchwork of 25 different national rail systems with incompatible technical parameters and contradictory legal demands makes seamless rail transport operations within the EU impossible. It is, therefore, necessary to introduce the same standards all over the EU.
- CLECAT is pleased to find vitally-needed proposals for more efficiency in the safety certification of railway undertakings and in the authorisation of railway vehicles, based on a **strengthened role for the European Rail Agency (ERA)**. Reducing the time-to-market for undertakings and their vehicles will boost market entry and innovation in the railway sector.
- Under the new proposals, common standards need to be applied by a single European institution providing a **one-stop-shop** for all necessary administrative steps, including the **authorisation of rolling stock and the certification of rail companies**. This single point of contact

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<sup>2</sup> According to the White Paper the modal share of rail freight has decreased from 11.5% to 10.2% since 2000

should be a strengthened European Railway Agency (ERA). It is of course important for the ERA to be properly resourced to continue to manage these processes, bringing also large interoperability benefits. ERA should become the **appeals body** for decisions of NSAs and of Notified Bodies. CLECAT is disappointed by opinions voiced by Member States who would want to limit this to cross-border homologation.

#### Harmonised scope of essential functions of Infrastructure Managers (IM)

- **The Independence of the IM** would allow the IM 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 its services provided to its customers. Full independence of charging and capacity allocation is required, as these are key to ensuring equal access. In order to ensure that the holding does not interfere with the fair and equal access to the rail network CLECAT supports proposals to **define the minimal** (or essential) **business functions of the Infrastructure manager**. These essential functions should encompass every activity, resource and competence related to: planning, building and maintaining the infrastructure, as well as operating the traffic on it (timetabling, train path allocation and traffic management responsibilities).
- **Reporting requirements for key indicators** Comparable business structures in the EU would enable the introduction of standardised key performance indicators (KPIs) to measure performance making Pan-European benchmarking possible. Quality criteria should be defined to monitor infrastructure managers' performance in this respect. This will help the IM become a more customer-oriented player.
- **Coordinating with the users** CLECAT supports the proposal that would require IMs to establish a **coordination body** with RUs, customers and public authorities making them central players in investment planning and the driver for efficiencies. Infrastructure managers shall take part in detailed and regular efficiency benchmarks including Key Performance Indicators on reliability, capacity, availability, punctuality, safety and asset management.
- **Safeguards against cross-financing** Despite the fact that CLECAT would favour a legal proposal requiring unbundling, we consider safeguards against cross-financing as essential. By no means should railway companies have the possibility to extract money from the infrastructure allocation to re-invest it in the creation of services and the acquisition of railway undertakings.
- **Safeguards against unfair cross-border competition / reciprocity clause** Equally, EU legislation must ensure that in case of a preservation of holding structures, integrated rail companies, can't abuse their stronger position by entering markets of Member States, where unbundling has already occurred. Integrated companies controlling the infrastructure and offering rail services at the same time in one country should not be allowed to use their privileged position as a spring board into markets with independent Railway Undertakings and Infrastructure Managers. Therefore, CLECAT supports the implementation of a **reciprocity clause** restricting the activity in Member States with unbundled railway companies to enterprises which themselves are not part of an integrated company

### Future legislation and on-going initiatives

- The implementation of the Recast of the First Railway Package (Directive 2012/34/EU) remains the basis of the 4<sup>th</sup> Package, as it contains some important provisions for market opening in the railway sector.
- CLECAT is disappointed about the fact that the Commission has not embarked on the 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.
- The new **TEN-T policy** aims to achieve a highly efficient European transport network with strong core rail arteries. The new EU infrastructure policy provides the necessary regulatory framework and financing to complete the rail core network. Infrastructure investments need to be accompanied by structural changes to boost operational efficiency and service quality through more robust and transparent governance and market opening.
- **Single wagon-load services (SWL)**, on which many shippers and freight forwarders rely, are particularly vulnerable at the moment; many of these services have been withdrawn by rail freight operators and many more services remain under threat. The reasoning given by operators for removing these services is costs. One of the biggest challenges for SWL transport is the collection/delivery of rail services between origin/destination and the nearest marshalling hub. Whilst this results in extended transit times, it is the cost of this operation which is frequently advanced as the principal problem with this type of traffic. This is due to the high share of fixed cost, for example for the first and last mile and the limited short-term flexibility to adjust production in case of volume decrease.
- CLECAT encourages continued resilience in combating and overcoming the barriers to making intra-European wagon-load services viable and sustainable. In this perspective we would like to stress the importance of **co-modal and intermodal terminals** which are crucial for the running of SWL services. A further reduction of SWL services would be out of step with European transport policy which aims to encourage the optimal use of rail transport in order to reduce GHG emissions. Nevertheless, the signs are not good at present, and therefore we find it unfortunate that the Commission has delayed an important study in the area.



## **Conclusion**

CLECAT is pleased that many of the recommendations that have been expressed in its paper of December 2012 have been incorporated in the Commission's proposals. CLECAT is convinced that the principles of the Fourth Railway Package can, along with the Recast of the First Railway Package achieve growth in the market. The provisions of the Fourth Railway Package need to be fully implemented in order to provide for an open, competitive and transparent structure.

CLECAT remains however worried about the efforts of some Member States and key players to delay the discussion on the market and governance aspects of the proposal.

Politicians and policy makers may find it difficult to imagine the problems that users and railway undertakings encounter when attempting to use rail or to provide new rail services. The reality is that because of the slow pace of liberalization of the rail freight market the market share of rail freight remains limited. The last decades have shown that open markets where independent infrastructure managers readily accept new entrants and grant access to rail infrastructure, in a transparent and non-discriminatory way, prosper and create new jobs. Where this is not the case, road freight options are likely to continue to dominate in terms of market share for quite some time.

Therefore, CLECAT urges Members of the European Parliament and the Council to support the Fourth Railway Package as an integrated and holistic approach to revitalise rail freight. CLECAT will draft some further comments and amendments for discussion with Members of the European Parliament.