

The European Voice of Freight Logistics and Customs Representatives

Brussels, 12th November 2008

RE: Communication from the Commission to the Council and the European Parliament on the quality of rail freight services, COM(2008)536

1. PREAMBLE

Clecat has examined the Commission's proposal for a Regulation on quality of rail freight services¹ (Clecat's report 2008/091) and came to the conclusion that it is necessary to publish the observations that emerged, with the intention to make the reaction of a large part of the rail freight users available to the Commission and other parties concerned.

Clecat represents European freight forwarders, logistics service providers and Customs agents. Neutral towards transport modes, logistics service providers are large users of rail freight services and, hence, important customers of railway undertakings. Aware of the fact that rail could and should play a more substantial role in the supply chain, Clecat has been promoting a liberalised European rail freight market where full and fair competition takes place throughout the European territory. Indeed, as it has been shown in other transport modes (e.g. road, short sea shipping), competition is the main natural driver of performance and results in an overall increase in service quality, an aspect which still is the weak point of rail freight transport. It is also probably fair to say that better service is a pre-condition for greater rail transport market share.

Competition in rail freight is a pre-requisite

A paramount observation emerges when we discuss the topic on rail freight quality: only an adequate level of competition in the rail freight market will guarantee reliable and affordable services that may compete successfully with other modes of transport.

Competition is a natural driver toward quality insofar as it pushes service providers to constantly improve the excellence of their services. This postulation is largely confirmed by the figures; the best results in rail freight are to be found in countries, where competition was early embraced and markets were soon fully liberalised. When the Commission made its previous proposal on the topic in 2004, Clecat said that competition is present on some markets, but it is totally or almost

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0536:FIN:EN:PDF>

totally absent on others, the various degrees of competition being generally, if loosely, correlated with the quality of service attained.

To foster competition in some European markets, a harmonised legal implementation on 2008 of the two railway interoperability directives (Directive 96/48/EC and Directive 2001/16/CE) is primordial. On that matter, Clecat partly agrees with the Commission that these EU directives have been adequately implemented in EU Member States, but Clecat also suggests that in other cases the implementation has been both slow and limited by a series of collateral fetters of different nature.

Compensation:

Clecat welcomes the Commission's decision to withdraw the idea of a regulation essentially based on a compensation system, as it was suggested in the last Commission's proposal in 2004. According to Clecat, compensation must be regulated at international level. Adding new legislation in this area would create conflict with existing international regulations; an idea is to supplement international agreements with EU legislative instruments that take account of the provisions therein contained.

Clecat believes that establishing criteria that may be in contrast with existing mandatory law without seeking harmonisation may lead to a number of sore reactions. The adoption of compensations schemes that are not in line with existing mandatory law may lead to an unexpected increase in insurance premiums that the industry will not be ready to absorb.

2. SOME COMMENTS ON THE COMMISSION'S 2008 PROPOSAL FOR REGULATION

In our opinion, competition is the key to improve quality. Perhaps it is not the only key to quality, but certainly one of the main drivers. However, as we just discussed, a number of obstacles are still hindering competition in the rail freight market. Clecat has welcomed the Commission's initiative on quality of rail freight services, as we believe that insufficient service quality can be considered as the main element impeding on the development and enhanced use of rail freight transport. Moreover, the idea of putting pressure on rail freight service providers to deliver quality is in principle an idea welcomed by Clecat Members, but it is felt the scope of the regulations should strictly limit itself to establishing principles of best practice.

Current needs in terms of freight quality:

Clecat does not consider the progress noted by the Commission on its proposal to be sufficient enough and believes that the rail service speeds and reliability urgently needs to be improved in order to meet the requirements of customers nowadays. In the recent exercise on transport bottlenecks, organized by the EU Commission it was noted that "quality of the rail service deteriorated over the last 20 years; average speed of goods trains corresponds to those of the 1950s (40–50 km/h depending on the line)."

Interference with private contracts:

Private contracts between parties are felt as a more adequate way to respond to their expectations, rather than recurring to mandatory law. The freedom to engage in a service contract without quality provisions must be maintained, the parties should not be obliged to thwart their contractual freedom, especially if and where adequate competition is already present. This is a general principle that works quite well in the absence of dominant positions, and the rail freight market unfortunately does not benefit from this absence everywhere in Europe.

Following the Commission's proposal, a quality agreement that is open for consultation to third parties and that clarifies some of the doubts that exist on the different roles and responsibilities on the parties would also constitute a useful instrument to develop.

In this light we feel that the industry has introduced mechanisms that in principle would work in the right direction. Direct observation however suggests that RU's are more than often reluctant to accept quality clauses in their contracts. This is especially noticeable where the concentration of the market is still in the hands of the incumbents. For these reasons it would be advisable that the requirement to include a quality agreement in the parties' contract be prescribed by legislation. Legislation may or may not then dwell on the nature of the quality agreement, but we prefer the option that a standard quality agreement is provided by other means (than legislation) in the area of standardisation and/or framework agreements.

Interoperability:

Clecat believes that interoperability is being implemented in a fragmented and distributed pattern. For instance, at EU level, Clecat is not persuaded that all EU Member States are implementing the ERTMS at the right speed, which is at visible clash with our main objective: one fully interoperable network, where full and fair competition can unleash all the enormous potential of professional modern rail services.

3. SUGGESTIONS FOR AMELIORATION

In recent times Clecat and the European Shippers' Council (ESC) have been working together on this important topic and they have come to some common understanding on what they would expect from railways services as a series of minimum requirements.

The following is a hopefully faithful translation of the concepts that were discussed and that need to be further developed, possibly in conjunction with the rail industry:

Enhance competition:

Clecat promotes a liberalised European rail freight market where full and fair competition may take place throughout the European territory, and believes that competition is an essential component to the improvement of the quality of rail freight services. All measures and actions should go toward achieving that goal:

- Clecat suggests adding competition in the relationship between IM's and their customers. IM's should be allowed to enlarge their choice of customers and to assign slots to different kinds of "authorised applicant", such as a freight forwarder or shipper and not just to traditional rail freight operators.
- In order to meet the customer requirements, it would be judicious to introduce a "Rail Regulator", similar to the UK RR, able to compel rail operators to meet quality criteria. The implementation of this "Rail Regulator" could perhaps be achieved by expanding the scope of the European Rail Agency.
- If we observe market defaults, for various reasons, not least the absence of sufficient competition, it may be opportune to introduce a mechanism of control on rail freight prices to avoid undue increase (it might be judicious to remember that the introduction of the 1st Eurovignette package in professional freight road transport was hailed by a wave of increases in rail freight prices around and above 4% in the same period when the observations made by the Commission identified a decrease of the improvements in quality).

Improve the work on quantitative aspects:

Introducing quality criteria must be coupled with measuring criteria that allow for results to be published. The absence of a measuring system allows for inextricable litigations in cross border traffic.

According to Clecat, simply providing the number of train arrivals that are on time like it is proposed in the Commission's communication is not sufficient. We need to know which ones are late and we also need to know how long the delay will be:

- Firstly, all measures need to be standardised (i.e. ensuring they are measuring exactly the same thing, with start points and end point clearly defined).
- Secondly, knowing if a train arrives late is too late: better to know if a train is running late so that corrective action or a contingency plan can be put in place to recover the service and prevent overall failure to deliver the freight as agreed with the final customer.
- Thirdly, it is important that other measurements throughout the door-to-door journey (including preparation and final delivery) are made in order to identify where in the chain the service failure was first becoming noticed and enabling a closer investigation as to the primary cause. In this way, the causes of service failure can be identified and rectified more readily, or else alternative strategies may be implemented to mitigate the impact, avoid the problem or prepare the customer for the sub-optimal performance and its likely impact so that they can modify their expectations or requirements on service quality.

Establish a 'Rail Quality Observatory':

Clecat supports the idea that parties who are present to a logistics contract shall voluntarily agree to:

- take standards performance measurements
- make the results available to other parties in their transport/logistic chain
- submit them to a central European database in an approved standard format

The development of this centralised European database will make it possible to:

- aggregate all confidential data received from different parties,
- produce a 'global' picture of operational performance,
- identify where in the transport chain performance is failing, and
- list the solutions implemented, and quantify their effectiveness in addressing the inefficiency.
- identify where additional or enhanced rail freight capacity or enhancements (infrastructure, rolling stock) or other strategic development is required to satisfy unconstrained demand-growth.

We propose submitting a call for funding to establish a 'Rail Quality Observatory' that would consist of a centralised European database and a financial assistance scheme to assist companies in the IT developments deemed necessary for automatic measurement, recording and electronic submission of performance data to the database and other parties in the chain where appropriate.

Consider a new approach for rail Interoperability:

Clecat's view is to implement TSI's and ERTMS along freight corridors, which would target several strategic international axes at a time. This could be used as a tool for enhancing coordination between EU member states in the implementation of rail interoperability.

For more information on Clecat's statement on the topic of rail transport interoperability, please consult our position paper (PP 2008/017)

4. CONCLUSION

There is an urgent need to improve quality of rail freight services in order to meet customer requirements. An adequate level of competition among a fairly diversified group of rail freight service providers seems to be the key to open the door of quality management for rail users. As a result of this observation Clecat wishes to stress the importance of a few elements that the future legislative and administrative actions ought to address:

- where applicable, the imperfect implementation of the 1st and 2nd railway packages;
- the establishment, as early as materially possible of a railway network dedicated to rail freight, or giving priority to rail freight;
- the adoption at EU level of the concept of "authorised applicants";

Moreover, quality criteria should be tailored in such a way that they increase the awareness of user and provider respective constrains and requirements. Indeed, operators may have developed their own service quality measurements and customers too may possess their own individually defined set of quality measurements. Without negating the value of these individually derived measures, Clecat believe that a common set of defined measurements which over-arch all others and focus on the delivery of service to a generic set of performance standards, would enable comparison between RUs and on different rail freight corridors, and the identification of common bottlenecks and barriers to improved service performance in a rail freight supply chain from consignor to consignee. This would create clarity as to the overall standard of service the rail freight industry can deliver and aspire to. Customers, RUs, IMs and others in the chain would be able to co-operate and co-ordinate their actions to improve the quality of the whole end-to-end service. In order to ensure consistency and therefore maximise the impact of the exercise, the initiative should be managed at European organisations' level.

Finally, an implementation follow-up system should be established, enabling users to submit observations, as and if malpractice in the implementation of the future directive is observed. In conclusion, the future legislations should set up a reference frame for competition to thrive, entailing a level of quality appropriate for the business of the third millennium, with the indication that non-quality may lead to compensation proportionate to the inconvenience, without getting involved in details that may result in contrast with the existing mandatory law or with freedom of contract.