

The European Voice of Freight Logistics and Customs Representatives

Brussels, Sep 19th 2008

RE: Public Consultation on "*How to improve the development of the integrated European Railway*"

Clecat represents the interests of the vast majority of EU enterprises which offer logistics, freight forwarding and Customs services both within and outside Europe. Its focus is therefore on freight transport only: this is the perspective from which our replies should be seen. Our members are impartial users of all modes of transport, but they deal exclusively with cargo. In view of its specific representation, Clecat may respond to this consultation exclusively referring to mobility of goods and will abstain from making comments on passenger transport, if not relevant to cargo movements. Moreover, 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 may take place throughout the European territory. This is the second perspective from which our reply to this questionnaire should be seen.

Clecat is by far the largest and most representative organisation of its kind in Europe, both from the geography (Portugal to Ukraine and Turkey, Norway to Malta) and from the business point of view (approx. 19.000 companies including big multinationals, medium and small size businesses) and it represents the interests of a very diverse and sizeable part of rail service users. Whilst some of Members are also involved in rail operations, this reply is prepared from the users' perspective. This is the third element of guidance in the appraisal of our replies.

In terms of identifying Clecat for the purposes of this consultation, Clecat is an EU level trade representative organisation, structured as an international non-profit association and it is registered in the EU Register of Interest Representatives. As specified above, its geographical scope is limited to the EU and the neighbouring countries.

We should like to express our views in this position paper by referring to the online questionnaire, which the Commission made available, but we shall not limit our suggestions to the proposed questions. This is done in the spirit of providing a comprehensive reply to the question "how to improve the development of the integrated European Railway." The reader will not fail to identify a series of proposals, which may suggest additional future legislative steps, in our explanations to the replies.

CLECAT, aisbl (n° 0408301209)

Rue du Commerce, 77
1040 Bruxelles - BELGIUM
Tel: +32 (2) 503 47 05
Fax: +32 (2) 503 47 52
E-mail: info@clecat.org

1. GENERAL POLICY

1.1. Interoperability:

1) Do you consider the following approach as fulfilling the needs of the objectives?

- imposing essential requirements to all parts of the railway system: **fully agree**
- setting a framework for adopting mandatory Technical Specifications for Interoperability (TSIs): **fully agree**
- setting a framework for publication of voluntary European standards when these standards give presumption of conformity to essential requirements of TSIs: **partly agree**
- setting a procedure for conformity assessment and suitability of use for Interoperability Constituents: **fully agree**
- setting a procedure for verification of subsystems: **fully agree**
- setting a procedure of designation of Notified Bodies by Member States: **fully agree**
- setting a procedure for authorisation of placing in service of subsystems: **fully agree**
- setting a procedure for authorisation of placing in service of vehicles as specified in the new version of the interoperability directive (Directive 2008/57/EC): **fully agree**
- setting a procedure for notification of national rules, specific cases and derogations: **fully agree**

Clecat considers that the various approaches contained in the questionnaire proposed by the Commission are adequate in view of fulfilling the objectives of the interoperability directives. Nevertheless, Clecat is also aware of the difficulty to achieve a sufficient degree of harmonisation at EU level, which is the main instrument to contain distortions. Moreover, Clecat only partly agrees on an approach consisting of setting a framework for publication of voluntary European standards when these standards give presumption of conformity to essential requirements of TSIs.

In view of the observed resistance to change, Clecat takes the view that the mix of mandatory and voluntary measures should tilt towards a more prescriptive attitude in creating substantial obligations to open the market to continental (and intercontinental) competition, interoperability being a precondition.

In view of the above Clecat fully agrees with all the above assumptions, but would recommend the publication of voluntary EU standard only as and if their conformity to the essential requirements of TSI's is ascertained by an independent body, such as the ERA.

We also take the view that an enhanced role of the European Railway Agency may significantly contribute to the abatement of the remaining technical barriers. In this line of thinking it may be advisable to design a compliance system that gives ERA the possibility to award and withdraw compliance records, even before further community steps are taken, in case the objectives laid down by the directives are not met. Such a system could work as an "early warning" advice and would put RU's in the position to amend their procedures long before non-compliance is dealt with more incisively.

In addition we would recommend that the ERA takes better account of the existence of rail service users by including at least the main rail users associations in their panel of stakeholders, where none are present to date. As regards freight, Clecat represents one of the largest groups of users and is naturally ready to cooperate.

1.2. Safety:

2) Do you consider the approach as fulfilling the needs of the objectives?

- common safety targets: fully agree
- common safety methods: fully agree
- a gradual harmonisation of safety rules: fully agree
- common procedures for safety certification of railway undertakings: fully agree
- common procedures for safety authorisation of infrastructure managers: fully agree
- a safety performance reporting system on the basis of common safety indicators with a view to carry out comparative analyses: fully agree

Clecat agrees that these approaches improve access to the market for rail transport service in the sense that they foster the assessment of safety levels at EU level, thus fostering harmonisation, and are essential prerequisites to the creation of a European Railway Area.

We also take the view that an enhanced role of the European Railway Agency may significantly contribute to the harmonisation of safety requirements. We would therefore insist in recommending, especially in this area, that the ERA takes account of the existence of rail service users by including at least the main rail users associations in their panel of stakeholders. As regards measures in secured and safe freight operations, Clecat is naturally ready to cooperate.

1.3. Agency:

3) Do you consider the decision to set up a European Railway Agency as fulfilling the needs of an integrated European Railway Area?

Fully agree

The *Economic evaluation is an essential feature common to all activities of the Agency* and is also within the mandate of the ERA. *Its objectives are:*

- *To avoid any decrease of the competitiveness of railway transportation, in line with the ultimate objectives of European legislation;*
- *To help identifying the key technical parameters in terms of either costs or benefits, on which the Agency should focus its activities;*
- *To clarify the stakes, especially in the field of interoperability, by providing decision-makers with economic estimates of technical alternatives.*

This is in Clecat view a part of the ERA mandate that is essential for the achievement of a competitive continental market.

4) Do you consider the European Railway Agency works/achievements as contributing to the development of an integrated European Railway Area?

Partly agree

The achievements realized so far by the Agency are in a way a positive initial step in the right direction, but CLECAT reminds the Commission that the current tasks and competencies of the Agency are still not extended enough to fully contribute to the development of an integrated European Railway Area. Notably as regards freight, the Agency may be invested with new tasks, such as setting the EU rules for a priority network for freight at continental level and for the hopefully upcoming EU procedure, which will enable Authorised Applicants to benefit from a commercial access to infrastructure.

5) Current tasks and competencies of the Agency

Not far reaching enough/ extended

CLECAT believes that the role of the Agency may be all the more important and influent in the achievement of an integrated and efficient European Railway Area, if its mandate is fully exploited and possibly enlarged. In order to do so its role should be enhanced and expanded, more weight should be given to the users and a balance of objectives between asset owners and service users should be reached. This is the area where the relationship between Infrastructure Managers and Authorised Applicants, when such option will available at EU level, could possible find its ideal regulation paradigm.

2. PROGRESS ON THE FIELD

2.1. Indicators:

6) General indicators:

- implementation of EU directives in national legislation: **fully agree**
- capacity of authorities to enforce national legislation resulting from EU directives: **fully agree**
- capacity of authorities to enforce national legislation resulting from EU secondary legislation (TSIs; CSMs, NVR decision, ...) in terms of staff and real actions: **fully agree**
- Number of notified bodies: **partly agree**

Clecat fully agrees that the first three indicators are relevant in order to gauge the progress of an integrated European Railway Area. The Commission should continuously ensure that the capacity of these authorities is able to guarantee the proper implementation of EU directives in national legislations.

Concerning the number of notified bodies used as indicators to measure the progress in terms of developing a safe and interoperable European Railway Area, whilst being aware that quantity does not necessarily mean quality, and whereas there is confidence that notified bodies certainly have an interest in maintaining a high level of credibility, nonetheless Clecat Members appreciate the existence of the possibility to choose and benchmark the performance of different bodies.

Clecat would also suggest more indicators be introduced in order to take account of the full mandate of the ERA, as regards efficiency, economic performance and cost/benefit analysis.

7) Interoperability Indicators:

With reference to the indicators presented in the online questionnaire, Clecat takes the view that some are better than others and we would even venture to suggest that the adoption of an overall weighted interoperability index would be useful in giving the immediate perception of progress made. We shall provide a brief comment to each of the indicators in the following lines:

- Number of subsystems and ICs certified by notified bodies according to TSIs: **partly agree**
This is an indicator that would provide information on the activities of the specific Notified Body, rather than in general;
- Number of subsystems placed in service according to TSIs: **fully agree**
This is a very useful indicator;
- Number of derogations: **fully disagree**
This is a negative indicator, the greater the number, the lower the degree of interoperability;
- Number of specific cases: **fully disagree**

This is another type of negative indicator, the greater the number of requested derogations, the greater the resulting difficulty in cross-border operations;

- Length of TSI conform infrastructure: fully agree

Very positive and useful indicator;

- Length of infrastructure covered by Infrastructure registers: fully agree

Same as above;

- Number of TSI conform vehicles: fully agree

Same as above;

- Number of vehicles covered by Rolling Stock registers: fully agree

Same as above;

- Number and quality of deployment plans notified where requested by the TSI: fully agree

Same as above;

- Proportion between Community and national technical rules: fully agree

Clecat being in favour of full interoperability, we think this is a very useful indicator and we hope that the proportion in favour of Community technical rules will be as great as materially possible.

8) Safety indicators:

- Number and quality of annual safety reports sent to ERA: fully agree
- Number and quality of investigation reports sent to ERA: fully agree
- Proportion between Community and national safety rules: fully agree
- Number of safety certificates compliant with the RSD: fully agree

CLECAT agrees that the number of reports that are sent to ERA constitutes a relevant indicator, but it reminds the Commission that the ERA should also have competency in order to deal with these reports and take and apply the proper entailing decisions. Thus, the number and quality of response treatment made by the ERA to these reports could possibly be used as a return safety indicator as well. Finally, Clecat holds that the greater the number of Community level safety rules, the greater the integration of the railways services, thus making this indicator central in the assessment of the objectives of the directive.

2.2. Legal Implementation:

When replying to this part of the questionnaire, it must be noted that it is not within Clecat's competence to reply for each and individual EU MS's. We have asked our own Members in each country to reply to this question individually. We shall therefore limit ourselves to replying with a view at EU level.

9) Do you consider that the EU directives on safety and interoperability have been fully and adequately implemented in the law of your country?

Not applicable

10) Do you consider that the EU directives on safety and interoperability have been fully and adequately implemented in EU Member States?

Partly agree

Clecat considers the full implementation of EU legislation as one of, if not *the* main contributor to the creation of a continental level playing field for competitive rail services. 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.

As regards a harmonised implementation, Clecat partly agrees 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. In order to ascertain the proper level of integration we believe a corridor approach would also be useful, because corridors are stretching far beyond national boundaries and work as natural drivers for harmonisation. The current heterogeneous situation throughout Europe as regards market opening still makes it difficult to obtain an integrated European Railway Area. Therefore, the EU must not slacken its efforts in ensuring the full implementation and application the existing legislative framework all over the Union.

2.3. Surveillance by authorities:

11) Do you consider that the authority set up in your country for enforcing interoperability and safety measures as a result of EU directives has a sufficient mandate and administrative capacity to fulfil the aims of those directives?

Not applicable

12) Do you consider that all authorities set up in the Community for enforcing interoperability and safety measures as a result of EU directives have a sufficient mandate and administrative capacity to fulfil the aims of those directives?

Partly agree

At EU level, Clecat agrees that the authorities set up in the Community for enforcing interoperability and safety measures as a result of EU directives have been helpful in establishing the common ground. A sufficient mandate and administrative capacity to fulfil the aims of those directives is probably still far from being fully accomplished. In this direction we should like you to take account of our observations at point 1.1, 1.2 and 1.3.

We take the view the participation of users' organisations must be ensured at all times.

2.4. Infrastructure:

13) Do you consider that the infrastructure in your country has a sufficient degree of interoperability?

Not applicable

14) Do you consider that infrastructure of the EU in general has a sufficient degree of interoperability?

Fully disagree

When looking comprehensively at EU level, the infrastructure in general is far from having a sufficient degree of interoperability. On the one hand, there are notorious differences (the most evident being the different electric supplies among the MS's), on the other hand the availability of interoperable equipment is still scarce. From another point of view, one cannot expect that all IM's and RU's change their existing material and equipment overnight.

This being said we believe that setting a clear and reasonably close period for the obsolescence materials and equipment would be an advantage. This could work in stimulating innovation and improvement both rolling stock and infrastructure. It would also partly contribute to making the access to the infrastructure easier for new entrants.

2.5. Vehicles:

15) Do you consider that the railway vehicles used in your country have a sufficient degree of operability?

Not applicable

16) Do you consider that the railway vehicles used in the EU have a sufficient degree of interoperability?

Fully disagree

Clecat considers that the railway vehicles used at international/EU level are still too few, if compared with the entire number of vehicles potentially available. This proportion should certainly be increased by means of updating and upgrading the rolling stock of RU's and vehicle owners and by various cross-acceptance instruments that might be both at legislative level and/or at standards level.

2.6. Signalling Systems:

17) Do you consider that your country is implementing the ERTMS system at the right speed?

Not applicable

18) Do you consider that all EU Member States are implementing the ERTMS system at the right speed?

Fully disagree

At EU level, Clecat is not persuaded that EU Member States are implementing the ERTMS at the right speed. We are of the opinion that a corridor approach, as proposed elsewhere by the Commission, is a useful approach to encourage both MS's and the industry to accelerate their pace.

2.7. Power Supply:

19) Do you agree this approach (not to harmonise power supply systems because multi-level locomotives appear to be the most cost-effective solution) is the best option?

Partly agree

Clecat is aware that there are several differing power supply systems coexisting in the Community rail system and agrees that harmonising them would not be an easy task. This being said there are strategic advantages in developing an EU wide shared rail power network. Such a network would be able to ensure continuity, dimensions of scale of supply, uniqueness and may contribute to the stability of alternative power generation systems. A gradual approach could be used and priority areas should be identified at EU level, where the greatest commercial advantage can be reached.

Striving for an EU wide rail power network and developing multi-system locomotives do not necessarily exclude each other in a long term perspective. We have also to take account of the fact that these latter locomotives are at present limited in number and they would be anyway insufficient to secure cross border operations all over the union for a number of years to come.

2.8. Infrastructure Managers:

20) Do you consider that the IM of your country complies with EU directives on safety and interoperability?

Not applicable

21) Do you consider that all IMs comply with EU directives on safety and interoperability?

Partly disagree

2.9. Railway undertaking:

22) Do you consider that the RUs operating in your country are complying with EU directives on safety and interoperability?

Not applicable

23) Do you consider that RUs operating in the EU are complying with EU directives on safety and interoperability?

Partly disagree

Clecat partly disagrees that RU's operating in the EU are complying with EU directives on safety and interoperability. The situation is quite complex, some RU's seem to be quite in line with the legal requirements and even make it a point to intercept legislation in anticipating the requirements of their customers. However the majority of the operators are still very slow in their progress and many keep creating, either openly or unwittingly, obstacles to the full implementation of EU railway legislation.

2.10. Notified Bodies:

24) Do you consider that the notified body(ies) established in your country is(are) carrying out its (their) tasks in accordance with EU directives on interoperability and TSIs?

Not applicable

25) Do you think there is a sufficient number of notified bodies in your country?

Not applicable

26) Do you think there is a sufficient number of notified bodies in the EU?

Partly agree

The number of notified bodies is probably sufficient at EU level, but we would recommend extensive cross-border operations of Notified Bodies as a measure, which may contribute to ensuring a level playing field.

27) Do you think that the price you pay for the services of notified bodies is right?

Not applicable

2.11. National safety authorities:

28) Do you consider that the National safety Authority set up in your country as a result of EU directives on safety and interoperability is appropriately empowered and has sufficient administrative capacity to fulfil its duties in accordance with those directives?

Not applicable

29) Do you consider that the National safety Authority set up in all Member States as a result of EU directives are appropriately empowered and have sufficient administrative capacity to fulfil their duties in accordance with those directives?

Partly disagree

Clecat partly disagrees with the idea that each and every National Safety Authority set up in EU Member States as a result of EU directives is appropriately empowered and has sufficient administrative capacity to fulfil their duties in accordance with these directives. Indeed, Clecat insists that these National Safety Authorities would share common tasks, responsibilities and competencies in order to facilitate their cooperation at Community level, notably in their decision-making for safety certification. In this area, an enhanced role of the ERA is also considered as a welcome step forward.

2.12. National Investigation Bodies (NIB):

30) Do you consider that the NIB set up in your country has sufficient mandate and administrative capacity to fulfil its duties in accordance with EU aims and objectives?

Not applicable

31) Do you consider that the NIB set up in all Member States have sufficient mandate and administrative capacity to fulfil their duties in accordance with EU aims and objectives?

No opinion

Clecat's preferred option is that such investigative tasks be assigned at EU level, possibly with help from ERA. Such development would contribute to a more harmonised implementation of the rules.

3. FINAL ASSESSMENT

3.1. TSI architecture:

32) What do you think about the current allocation of TSIs to the different parts of the railway system?

All TSIs should be reshuffled into three parts: infrastructure, vehicle, operations

Concerning the current allocation of TSI's to the different parts of the railway system, Clecat suggests that the current allocation should be partly changed and all TSI's should be reshuffled in order to take account of infrastructure, power supply, type of vehicles available and operations. As regards the latter point we would prefer that freight network specific TSI's are designed in order to take account of the specific need connected with

- lines intended for passenger services only,
- lines intended for mixed traffic (passenger and freight),
- lines specially designed or upgraded for freight services,
- lines leading to private or public sidings, with specific speed and use limitations
- freight hubs, including intermodal terminals,
- interfacing with authorised applicants' own equipment.

3.2. TSI content:

33) What do you think about the current content of TSIs:

The current content is right and should be modified, as appropriate, to close open points, to take account of new standards, to take account of technical progress

As for the specific content of the TSI and with reference to the questions in the questionnaire Clecat takes the following view: whilst it is clear that TSI's should be open to new standards and technical progress, it is also important to assess whether they are all compatible with the fact that the rail network of the future may be one in terms of continental geography, but it may be many different co-existing networks in terms of purpose. Such a detailed assessment, though, exceeds the scope of this consultation and it would be grounds for an entirely new one, in our opinion.

3.3. Implementation Strategy:

34) What would you consider to be the best approach:

Approach by corridors

Currently TSI's are applicable for each new/upgrading/renewal project. This is the de-facto situation, but it is far from being what Clecat Members would have chosen, if they had had the opportunity. This means that interoperability is being implemented in a fragmented and distributed pattern, 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. Clecat's view is that other strategies may come to supplement the current approach, such as for example implementing TSI's 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. Another way of looking at this pattern is to see MS's as elements of a mosaic – one has an interest to approximate the colour (read conditions) of one element to that (those) of its neighbours. In other words a mechanism could be designed to encourage neighbouring MS's to progressively approximate their strategies to those of their neighbours.

3.4. Balance between regulation and private initiative:

35) Do you consider that the current balance between EU or national regulation on railway safety and interoperability and private initiative is:

Too much national versus EU regulation

Clecat considers that the current balance between EU or national regulation on railway safety and interoperability and private initiative is too weak. After over 17 years of its inception, the single rail transport market is still not achieved, mainly because this public/private sector has not evolved at sufficient speed towards a fully open market. Clecat believes that it is by moving the regulatory domain progressively toward a EU wide dimension that a successful and effective implementation of railway safety and interoperability can be achieved, thus creating eventually the conditions for a fully liberalised rail market without the fetters that are created by national or local prescriptions.

3.5. Responding to business and societal needs:

36) Do you consider that the current EU policy and progress in the field in terms of railway safety and interoperability is responding to commercial and societal needs:

Not enough economic orientation / focus

Too much social orientation / focus

Clecat considers that the current EU policy and progress in the field in terms of railway safety and interoperability is still not responding sufficiently to commercial and societal needs, because it needs to take more account of the requirements of the users and to strike a better balance between social protection and economic and service efficiency. Clecat repeatedly affirmed that rail will increase its market share only as and if it shows a comparable level of performance with alternative modes and in particular road transport, which represents today's benchmark. We insist that it is the duty of rail services to become more efficient and competitive. There is no interest in penalising the best performer, so that those who come later are not too far away: this is a loser's strategy in the perspective of the collective performance of a team.

3.6. Culture and knowledge:

37) Do you consider that the creation of an integrated European Railway Area is generating difficulties to the traditional way of managing competences in the railway technical field?

Partly agree

Clecat tends to agree that the creation of an integrated European Railway Area is generating difficulties to the traditional way of managing competences in the railway technical field, as it implies new efforts, new procedures, additional finances, etc. In one word, innovation and evolution is not comfortable, because it needs moving and is ill-adapted to the status-quo.

We are aware that some traditional behaviour will have to be abandoned in favour of a more EU compliant behaviour, new competencies will have to be acquired and younger workforce will have to be inserted. This is however the very essence of a dynamic system and we believe it would be very dangerous for the EU to think in a next-to-retirement fashion.

38) Do you consider that more should be done to inform EU citizens and businesses about the development of an integrated European Railway Area?

Fully agree

Clecat insists that more should be done to inform EU citizens and businesses about the development of an integrated European Railway Area. Enhancing the quality of shared information would allow for more transparency between the different European stakeholders involved with its development and would significantly increase the opportunity for rail transport to promote its best practices.

As Clecat suggested in the past, setting a transparent framework for the development of an integrated European Railway Area is not only an important pillar of the EU rail transport policy, but it is also essential for full liberalisation. This will be fully achieved only through technical interoperability and the harmonisation of safety and security rules.