

Open letter to the attention of the transport advisers of the permanent representations of EU Member States on the Recast of the Railway Package

Brussels, 9 December 2011

Dear Madam, Sir,

The signatories of this letter representing logistics service providers (CLECAT), shippers (ESC), the independent rail freight companies (ERFA), the inland ports (EFIP), the seaports (ESPO), and the shipowners (ECSA) would like to share with you their views and expectations regarding the Commission's proposal for a directive establishing a single European railway area (Recast) COM(2010)475.

We are contacting you in a joint manner because we share the same wish to have an open rail freight sector that is able to efficiently respond to Europe's economic and environmental challenges. There have been many instances where the liberalisation efforts have made a very positive difference. New entrants and new services have helped in some parts of the EU to stabilise and grow rail's share of the freight market. Nevertheless, it is disappointing that a significant number of new entrants that had entered the market during the formative years of liberalisation had since ceased operations or been taken over by the incumbent operators, which slows down the pace of liberalisation.

In this respect, we appreciate that some progress had been made recently at the European Parliament on the Commission's proposal which is mainly supported by the signatories of this letter. However, we remain highly concerned with the adoption by the Parliament of some new language in the proposal which will weaken the Commission proposal and might in our view allow some anti-competitive practices in the rail freight market to continue.

The members of our associations have a growing interest in exploring the opportunities of rail freight today and in the future. However, we do believe that the success in achieving an increased share of rail freight in the future depends on fair competition and open access in the rail freight market through the development of sound business models and efficient internal management that must be achievable within the framework of a modern rail market legislation. It is impossible to achieve this without separating the ownership and management of the network from the operation of services.

With these general remarks in mind, we would like to raise the following points for the upcoming discussion at Council level on the position that has been adopted at first reading by the European Parliament:

- Transparent separation of account: We welcome the decision of the European Parliament to establish a separation of account between infrastructure managers and railway undertakings. However, this decision is undermined by the adoption of the amendment on article 6.4 of the Commission's proposal (attached for your convenience). We believe that this unclear amendment would undermine all the ongoing work to advance competition since it would allow railway companies to extract money from the infrastructure allocation to perhaps re-invest it in the creation of services and the acquisition of railway undertakings, in other words this would allow further anti-competitive practices. For this reason, we urge the Council to delete the last sentence of this amendment.
- Full Unbundling: We are convinced that a strict separation of infrastructure management from transport service operations (full unbundling) is the right method to guarantee an efficient and transparent management of railway companies like already demonstrated in several countries. We are looking forward to the Commission's proposal by the end of 2012 and are looking forward to the strong support of the Council and the European Parliament for such an initiative.
- Regulatory Bodies: We appreciate the position taken by the European Commission and the European Parliament in favour of a clear and concrete strengthening of Regulatory Bodies to oversee fairness and efficient management in the industry. The Council should follow the same path and realise the importance for the Regulatory Body to have the appropriate financial and administrative resources to quickly react and properly fulfil its role.

We would like to conclude this letter by stressing our belief in a fully liberalised rail freight sector. To reach this, it is crucial that the EU institutions deliver a clear and transparent legal text at the end of this legislative procedure in order to guarantee an efficient transposition of the EU directive at national level.

We thank you for the attention to our views.

Yours sincerely,

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