



EIM amendments

to the proposal for a

Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services

COM(2004) 144 final 2004/0050 (COD)

EIM fully supports the motives expressed by the European Commission:

- The need for performance enhancements of rail freight services in Europe in order to convince rail freight customers of the benefits of continued use of rail transport, or of changing their logistical processes to favour rail transport and to contribute to more balanced modal shares in the European transport system.
- The overall development in the service quality of international rail freight services is alarming: indicators for the punctuality of international combined transport trains, covering all major European freight corridors, show that the level of performance is unacceptable.
- The cost impacts of poor service quality for the railway sector are considerable. Railway undertakings and combined transport operators cannot acquire new rail freight transport contracts and may even lose traffic to other modes.

In the other transport modes freight forwarders do not ask for such regulations because the competition is real and they can switch from one supplier to another.

Implementing an open freight rail transport market does seem to us the right solution to improve quality, and we therefore urge the Member States and the Commission to increase their efforts in all fields to ensure that the market opening laid down in Directive 91/440, as amended by 2001/12 and 2004/51, will actually take place, and the full implementation of the performance schemes required by directive 2001/14/EC.

Moreover EIM have some doubts about the effects of the proposed regulation, in particular since all EU Member States are expected to ratify the new COTIF of June 1999, which is expected to be put in force in 2005, where basic quality requirements on rail freight are laid down in the CIM (Appendix B to the Convention).

The proposed regulation will add new elements and there will be confusion on how to apply the provisions of the two legal acts whenever they diverge.

The European Commission will be part of OTIF in the coming months and it seems that one possibility would then be to postpone the regulation until further experience is gained concerning the application of the new COTIF.

Furthermore, EIM fears that the proposed regulation might have an adverse effect on the rail transport mode by increasing transport tariffs, due to the insurances the actors would have to subscribe to in case of putting in place of the proposed regulation, and thus giving rail an unfavorable position compared to competing modes where no such quality requirements are imposed.



However, should the Council and the Parliament judge that the regulation is an appropriate way forward to further regulate rail freight transport we have at this stage the following suggestions for amendments (in a few weeks, complete amendments will be proposed):

- The definition of ‘transport contract’ should be changed and the terminology should be brought in line with the CIM, i.e. the ‘carrier’ should be the party with whom the ‘consignor’ concludes a ‘contract of carriage’. The current definition does not cover for example authorized applicants or logistics integrators.
- The scope of the regulation should be limited to international freight transport. In Member States where there is a functioning market for rail freight transport there is also a long tradition of contract negotiations between consignors and carriers that has resulted in a variety of quality clauses in contracts of carriage. The requirements of the regulation impose unnecessary constraints on these contracts and will not improve quality.
- Article 3 second indent creates huge legal implications for both carriers and customers. One possibility would be to make the quality requirements of Article 3 mandatory only if this is explicitly required by the customer.
- Article 18 gives the railway undertaking the right to claim compensation from the infrastructure manager, for example in case of delays. This might give the railway undertaking the right of double compensation if there is a performance regime with compensations in place according to the provisions of Article 11 of Directive 2001/14. Since the infrastructure manager is not a party to the transport contract (and should not be) the compensation that could be paid should always be limited to the one laid down in the performance regime. Normal liability rules in Member State legislation apply in cases where the infrastructure manager have been negligent or committed an offence.

November 2004



Proposed amendments

Whereas

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| <p>(3) A lack of economic and contractual incentives is a significant cause of low quality performance in rail freight. The existing provisions for compensation to rail freight customers in the CIM Appendix to the COTIF do not provide effective incentives for quality. Specific regulatory measures to increase the quality of service are therefore needed to restore the confidence of rail freight customers in rail freight services.</p> | <p>(3) A lack of competition and economic and contractual incentives is a significant cause of low quality performance in rail freight. The existing provisions for compensation to rail freight customers in the CIM Appendix to the COTIF do not provide effective incentives for quality. Specific measures to increase the quality of service are therefore needed to restore the confidence of rail freight customers in rail freight services.</p> |
| <p>(8) The effects of this Regulation should be reviewed, in particular in relation to developments in the levels of competition on the relevant rail freight markets.</p> | <p>(8) This Regulation must be abolished when the competition on the rail freight markets is sufficiently effective.</p> |
| <p><i>Article 1</i> <i>Subject matter and scope</i></p> <p>This Regulation lays down the obligation of railway undertakings and rail freight customers to define quality requirements for rail freight services, and subsequent compensations in the case of non-compliance with the quality requirements in the transport contract. This Regulation shall apply to all national and international rail freight services in the Community. Services to, from and through third countries are included if the Community has concluded an agreement on the subject matter of this Regulation with the third country.</p> | <p><i>Article 1</i> <i>Subject matter and scope</i></p> <p>This Regulation lays down the obligation of railway undertakings and rail freight customers to define quality requirements for rail freight services, and subsequent compensations in the case of non-compliance with the quality requirements in the transport contract. This Regulation shall apply to all international rail freight services in the Community. Services to, from and through third countries are included if the Community has concluded an agreement on the subject matter of this Regulation with the third country.</p> <p><i>The scope of the regulation should be limited to international freight transport. In Member States where there is a functioning market for rail freight transport there is also a long tradition of contract negotiations between consignors and carriers that has resulted in a variety of quality clauses in contracts of carriage. The requirements of the regulation impose unnecessary constraints on these contracts and will not improve quality.</i></p> |



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| <p><i>Article 2</i> <i>Definitions</i></p> <p>For the purposes of this Regulation the following definitions shall apply:</p> <p>(a) "railway undertaking" means any public or private undertaking licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this includes undertakings which provide traction only;</p> <p>(b) "rail freight customer" means any public or private undertaking that contracts with a railway undertaking for the provision of any kind of rail freight transport service;</p> <p>e) "infrastructure manager" means any body or undertaking responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems;</p> <p>(f) "transport contract" means a contract between a railway undertaking and a rail freight customer for the provision of rail freight services.</p> | <p><i>Article 2</i> <i>Definitions</i></p> <p>For the purposes of this Regulation the following definitions shall apply:</p> <p>(a) "railway undertaking" means any public or private undertaking licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this includes undertakings which provide traction only. This definition covers the CIM "carrier" concept;</p> <p>(b) "rail freight customer" means any public or private undertaking that contracts with a railway undertaking for the provision of any kind of rail freight transport service. This definition covers the CIM "consignor" concept, as well as authorized applicants or logistics integrators;</p> <p>(e) "infrastructure manager" means any body or undertaking responsible in particular for operating the movement of trains and establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC, which may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings;</p> <p>(f) "transport contract" means a contract between a railway undertaking and a rail freight customer for the provision of rail freight services.</p> <p><i>The definitions and the terminology should be brought in line with the CIM, i.e. the 'carrier' should be the party with whom the 'consignor' concludes a 'contract of carriage, and consistent with the proposed regulation on passenger rights.</i></p> |
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Article 18

Actions against the infrastructure manager

In the event of a pecuniary loss to the railway undertaking resulting from compensation payable under this Regulation and falling under the responsibility of the infrastructure manager, the railway undertaking shall pay the appropriate compensation to the rail freight customer.

The railway undertaking shall have the right to claim compensation from the infrastructure manager to recover the compensation the railway undertaking has paid to the rail freight customer. This infrastructure manager's liability shall be without prejudice to the application of the performance scheme laid down in Article 11 of Directive 2001/14/EC of the European Parliament and of the Council.

Article 18

Actions against the infrastructure manager

In the event of a pecuniary loss to the railway undertaking resulting from compensation payable under this Regulation and falling under the responsibility of the infrastructure manager, the railway undertaking shall pay the appropriate compensation to the rail freight customer.

The railway undertaking shall have the right to claim compensation from the infrastructure manager to recover the compensation the railway undertaking has paid to the rail freight customer. This infrastructure manager's liability shall be **limited** to the application of the performance scheme laid down in Article 11 of Directive 2001/14/EC of the European Parliament and of the Council **or in relation to the price of the path, if this performance scheme does not contain financial compensations.**

IMs' responsibility must be specified on what the IMs can be held liable for. It is EIM's opinion that the RU's right of recourse should be restricted to those cases where the IM can be proven to have been negligent or in the framework of the performance scheme laid down in Directive 2001/14/EC.

The liability of the IMs has not to vary according to the terms that the RU happens to include in his contract with his customer. This is beyond the control of the IM, and it means that the terms of liability will vary between the different RUs.