European Rail
Infrastructure Managers

EIM

Position on the European Commission's 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)

The European Commission founds such a regulation on:

- The White Paper 'European transport policy for 2010: time to decide, in which the Commission clearly announced that users of the transport system need to be put back at the heart of the transport policy, regardless the mode of transport.

- 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. This will be in the long term assured by the market integration policy that has been launched, the opening of rail freight markets and increased competition, but the rate of increasing competition is likely to be slow and gradual, hence service improvements will also materialise only gradually.

- 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: in 1999, 40% of combined transport trains were delayed by more than 30 minutes. Three years later in 2002, 52% of the trains were not on time; 7% were even delayed more than 24 hours.

- 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 2000, the UIRR estimated that the overall annual cost of non-quality in rail freight to combined transport operators is €41 million, representing ca. 6% of total international revenues for UIRR member companies.

EIM have already expressed the view that, as in any other commercial activity, competition will make these regulations unnecessary because customers will be allowed to change their suppliers (EIM has always welcomed the opening of the railways to the benefits of competition).

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.

Morover 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 unfavourable 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.

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