



Position Paper: Recast of the First Railway Package

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Road-rail Combined Transport¹ is the system of transport, which brings the European concept of *co-modality* to success by effectively combining the flexibility of road transport in urban environments with the environmental sustainability, safety and reliability offered by electrified railway technology. This unique system of transport is used in about 11% of continental transport chains in Europe² today.

The unaccompanied Combined Transport chain was found to emit about 75% less CO₂ in 2003³ and cause fraction of the transport-related external costs as compared with a pure road transport-chain. Combined Transport helps to save about 20-30% of CO₂ emissions vis-à-vis pure-road transport-chains. The substantial advantage of road-rail Combined Transport is based on the externality-benefits of electrified rail over road transport⁴.

UIRR⁵, the organisation which represents road-rail Combined Transport companies from across Europe, hereby expresses its position on the proposal of the European Commission to re-cast the Directives of the First Railway Package. UIRR published two position papers during the past six months in which the fundamental ideas of Combined Transport are comprehensively outlined: (i) on issues of rail infrastructure⁶ and (ii) on infrastructure access charging, internalisation and transport taxation⁷. Most positions expressed in this position paper are rooted in either of these two previous reports.

The need for a re-cast

UIRR believes that the ***Directives of the First Railway Package need fundamental refinement*** for several reasons:

- The current text of Directives 2001/12, 13 and 14 defines several concepts broadly leaving too much room to Member States for 'free interpretation' resulting in more divergent national legislation than would be desirable from the points of (i) creating a competitive European rail transport sector as originally intended by the Legislator and (ii) enabling new enterprise to fairly blossom in the 'liberalised' rail sector.
- The First Railway Package was adopted prior to the major expansion of the European Union in 2004, and therefore did not take into account the peculiarities and the 'railway reality' in the new Member States.
- An infringement procedure was launched by the European Commission in 2007 originally against 21 Member States, and which is presently in the Court-phase against 13 Member States. While these proceedings are not closed yet, they have already uncovered several shortcomings of the law and of daily practice which may be corrected by adjusting and expanding the European legislation in several aspects.

¹ Two types of road-rail combined transport are differentiated: (i) unaccompanied, when goods packed into containers, swap-bodies or semitrailers are transferred from road vehicles to trains, and (ii) accompanied, or rolling-motorway, services, when complete tractor-trailers road-trains are transported using specialised rail wagons.

² UIRR estimation based on EUROSTAT, UIC and UIRR statistics

³ UIRR calculation based on the EcoTransIT-tool (www.ecotransit.org)

⁴ Straße und Schiene - Ökologische Vor- und Nachteile der Verkehrsmittel IFEU, "CO₂-Berechnung", part 1&2: "Alle Daten und Fakten zur Berechnung des LKW- & Bahn-Footprints", Verkehrsrundschau, no. 42&43, Springer Verlag, Munich, 2009.; Hausberger, S. et al: Handbuch Emissionsfaktoren (HBFA) des Straßenverkehrs, TU Graz, version 2.1, Berlin, 2004.; EXTERNE KOSTEN DES VERKEHRS 2004 INFRAS und IWW Universität Karlsruhe für UIC und CER; External Costs of Road, Rail and Air Transport - a Bottom-Up Approach Fraunhofer-Institut für Systemtechnik und Innovationsforschung 1998

⁵ **Who is UIRR:** Founded 40 years ago, in 1970, the International Union of Road-Rail combined transport companies (UIRR) represents the interests of a unique system of transport: through utilising Intermodal Loading Units (ILUs), or special wagons capable of carrying unmodified ordinary trucks⁵, Combined Transport operators catalyse the effective insertion of (electric) rail technology into the longer distance sections of continental freight transport-chains.

⁶ Issues of Rail Infrastructure, July 2010 (<http://uirr.com/en/media-centre/press-releases-and-position-papers/2010/mediacentre/287-position-paper-on-issues-of-rail-infrastructure.html>)

⁷ Infrastructure charging, external costs and competition, December 2010 (<http://uirr.com/en/media-centre/press-releases-and-position-papers/2010/mediacentre/403-pos-pap-infra-externalities-fair-competition.html>)



The aims of the re-cast

In UIRR's opinion the re-cast should be motivated by and thus address three aims:

- Placing the finances of European rail infrastructure managers on a sustainable footing,
- Improving the transparency and fairness of competition within the rail sector, and
- Reducing the inequality between the competitive framework conditions of competing modes of transport.

UIRR encourages the legislator to evaluate each element of the amendment by determining whether it fulfils any, or all, of the above listed aims, and if yes then examine the effectiveness of the proposed measure.

As a consequence UIRR trusts that the amendment will result in a more precise, better defined and easier to implement set of rules that will better facilitate discrimination-free competition in the rail sector making rail freight services more competitive and thus opening the possibility for increased market share for the sustainable rail mode.

Summary of UIRR positions

- Stability and foresight of track access charges: The draft recognises the problems with track access charges (TAC) regimes across the European Union, and the proposed changes will likely improve the transparency and homogeneity of structure of TAC throughout Europe; however it fails to deal with the need to make the year-on-year changes in the levels of TAC predictable. Road tolls are set by the governments of Member States, and they typically refrain from 'above inflation' increases especially in times of economic crisis. TAC on the other hand is the result of a calculation (a complicated algorithm) which may easily lead to a year-on-year increase well above inflation. Even with the increased transparency of TAC structure as foreseen by the draft, stakeholders will be in no position to predict the change of TAC over the typical investment period in rail of 15-30 years. Therefore UIRR recommends that Member States should be required to regularly issue a report on their projection of how track access charges will likely change year-on-year on their rail network over a reasonably long period going forward.
- Internalisation of rail externalities: UIRR has uninterruptedly supported the principle of fair and equal internalisation of every external cost of transport across all modes. The internalisation of all manner of transport noise, including that emitted by rail traffic, should be implemented with this in mind. Internalisation will necessarily disturb the status quo including the relative competitiveness of modes. For fairness sake UIRR advocates that internalisation of rail externalities should not be required to progress faster than that of road (in the Eurovignette Directive).
- State funding: UIRR proposes that Member States should guarantee the funding to infrastructure managers needed to allow adherence to their own projections of year-on-year TAC changes.
- Market segments: UIRR believes that instead of defining market segments that can "potentially bear higher access charges" a clear set of European train-categories and hierarchy be defined and included in the legislation which guarantees a higher level of service (punctuality and average speed) in return for a higher access charge.
- Separation of accounts: as a matter of principle UIRR holds that no railway undertaking should be permitted to have any privileged (ownership-type) relationship with an infrastructure manager. While the separation of accounts is an imperfect tool to prevent such privilege, UIRR advocates closer control of it through defining an obligation for the independent auditors of infrastructure managers to review this separation.
- Infrastructure development strategies: These strategies should be developed with a view of future mobility and freight transport needs.
- Enhanced monitoring of the European rail market: UIRR believes that regular reporting (Annex IV) should be expanded with additional requirements on (i) the gap between design and actual performance parameters of the infrastructure elements under management, (ii) the relative levels of TAC/rail tkm and road toll/road tkm in a Member State, (iii) punctuality and average speed per train category, (iv) proof of management independence and (v) average distance covered per train category within a given year.



Background to UIRR positions

1. Establishing sustainable financing for Europe's rail infrastructure managers

The entirety of costs related to maintaining, operating and developing rail infrastructure can not be charged to the users for it would result in a high cost level for operating railway services, like freight transport, that would disable competition with other modes of transport, like road for example, which are not charged full costs of either the public infrastructure they use, or the externalities related to their operations. Consequently rail infrastructure managers fundamentally have two sources of revenue: users and public budgets. Users pay track access charges that are the product of a complicated calculation factoring the costs of rail infrastructure management less the governmental transfers received.

1.1. State funding of rail infrastructure managers (Article 30/2)

UIRR expressly endorses the concept of compulsory multi-annual contracts between State and infrastructure managers to provide foreseeable State financing in a transparent manner “for at least a five year period”. Considering the requirements for stability in track access charges over a significantly longer period of time, however, UIRR sees justification for a much longer term contracts of the kind. Contributing to transparency and aiding the foresight of investors and business heavily relying on rail freight, **Member States should be required to regularly issue a report on their projection of how track access charges will likely change year-on-year on their rail network over a reasonably long period of time going forward.**

1.2. Track access charging

A fundamental issue in the competitiveness of rail operations and business (investment) planning – especially for potential new entrants – are track access charges, which in some Member States reach up to 40 percent of total cost of rail freight operations. The draft mentions as motivators of the proposed changes the intention to: (i) “create a uniform structure” of track access charges throughout Europe, (ii) “increase the transparency of charging”, and (iii) “improve the coherence of national charging schemes”. These aims are attractive though not overly ambitious. UIRR proposes to include a fourth target of **ensuring the stability of track access charges.**

1.2.1. “Efficient charging schemes” and “charging coordinated across borders” (Article 29/2) are too vague concepts in UIRR's view. UIRR struggles to comprehend the concept of “efficient charging schemes” as the term “efficient” may mean one thing from the infrastructure manager's perspective, and the exact opposite from a user/operator perspective. UIRR can only accept the concept of “efficient charging schemes” if the legislator explains how **“efficient” is to be interpreted from an operators (intermodal competitiveness's) approach** within the Directive.

1.2.2. The proposed “inventory of assets managed” (Article 30/4) is welcomed by UIRR, however it recommends that the requirements of this inventory be expanded with the following components:

- (i) Nominal or design parameters as stated in the permits placing the given infrastructure element into operation such as maximum allowed axle load, rail gauge, maximum allowed track speed and train length etc. should be listed alongside, and
- (ii) Actual parameters in comparison with the design parameters as determined by the infrastructure manager; figures at or below the design parameters due to wear-and-tear and/or temporary lack of maintenance.

The multi-annual contract should be defined with a requirement to ensure the predictable closing of the gap between design and actual parameters of the infrastructure network, or maintenance of a reasonably high ratio of punctuality. Moreover, any deviation between design and actual parameters of infrastructure elements exceeding for example 10% should be reflected as a **discount factor of the track access charge applicable on the concerned section.**

1.2.3. “Avoidance of undesirable disproportionate fluctuations” in TAC (Article 31/6) is seen as insufficient by UIRR as the rules only extend to “train services and times”, and not to the year-on-year changes in TAC levels. In order to ensure a stable investment climate in the rail sector and a fair chance for newcomers to rail operations comparable to the conditions that apply to road transport UIRR believes that **Member States should be required to provide long-term projections on expected TAC changes** (see also 1.3).



Moreover, Member States should be required to annually report on the relative levels of TAC/tkm and road tolls per tonne kilometre, as well as to provide an analysis of infrastructure access charging for the different modes of transport, primarily road and rail, on their territories.

1.3. Internalisation of externalities of rail transport

1.3.1. UIRR was sad to find the provisions of the existing legislation on congestion charging (Article 31/4) remain almost unchanged in the draft at a time when the European Council inserted serious limitation to the congestion charging regime proposed for road transport⁸, a fierce competitor of rail. UIRR would expect that the European Legislator introduces a **ceiling on TAC mark-ups applicable during periods of capacity scarcity**.

1.3.2. UIRR fully understands the necessity to lower the noise levels of freight wagons. While the TSIs have set lower noise levels for new wagons, the retrofitting of the existing freight wagon fleet remains a problem due to the long lifetime of rail rolling stock. Nevertheless, UIRR believes that the introduction of noise differentiated track access charges proposed by the Commission, is an inadequate instrument. A recent preliminary report of UIC/EIM/ERFA has found that the non-value added administrative costs of implementing noise differentiated track access charges would be prohibitively high. **Member States could save considerable amounts spent on the construction of noise barriers if they would use some of their infrastructure budget to fund the retrofitting of freight wagons**. Extending direct subsidies would be the most effective incentive system: efficient to introduce and involves the lowest administrative costs. The European Commission should consequently propose legal ways and a European initiative to solve this temporary problem in a constructive way rather than implementing a complicated system burdening the sector with high administrative costs endangering the overall competitiveness of rail freight.

1.3.3. Internalisation rules for any “other environmental effects (including noise)” caused by rail traffic (article 31/5) appear fairly worded. UIRR would nevertheless like to point out that the European Legislator decided in 2009 to internalise the CO₂ emissions related to electricity produced for rail traction purposes⁹ while the GHG emissions of road transport, which rail transport is most frequently compared with, are exempted from the externality categories that are considered to be internalised in the present round of amendment of the Eurovignette Directive. Therefore **UIRR – as a principle – can only accept the internalisation of “other environmental effects” of rail transport to the proportion to which road externalities will be allowed for internalisation under the new Eurovignette Directive**.

1.4. Market segments and mark-ups (Article 32)

Calculating a “rate of return which the market can bear” can be quite difficult (if not outright impossible as it requires that operators disclose confidential business information), and so is defining “market segments” that can potentially bear a higher track access charge. Mark-ups in UIRR’s view can only be justified by higher levels of service guaranteed with them. Consequently, UIRR recommends to the legislator’s attention the **concept of a European categorization and hierarchy of trains** which it originally outlined in the position paper discussing Issues of rail infrastructure (issued in July 2010). This would entail clear categories for both passenger and freight trains with different service quality levels and different prices similarly to categories of postal shipments (classes of letters and parcels) and a hierarchy of priority thereof.

1.5. Performance regimes (Article 35)

The “performance scheme” outlined in the draft can only partially address the issue of traffic management and can only lead to a meaningful improvement in overall rail service quality if it is coupled with an extensive transparency drive with a detailed public reporting obligation at its core. Infrastructure managers should be required to **report on primarily punctuality and average speed** of each train category.

⁸ See Council of Transport Ministers’ first reading position on the amendment of the Eurovignette Directive (15 October 2010)

⁹ Through inclusion into the European Emission Trading Scheme (ETS)



Recommendations:

- Track access charging regimes should only be “efficient” from the operator’s (customer’s) position, which must be made clear in the draft.
- Sub-par infrastructure should not be charged at full price, it should allow for a discount until repaired.
- Member States should be required to issue long-term projections on the foreseen year-on-year changes of TAC.
- A ceiling for congestion (capacity scarcity) mark-ups should be defined; rail externalities should only be internalised in proportion to that of road transport (as contained in the Eurovignette Directive).
- A solution which does not hurt the competitiveness of rail freight should be defined to facilitate the brake system retrofitting of the existing European freight wagon fleet with lower noise emitting brake linings.
- Member States should be required to provide sufficient financing to rail infrastructure managers to enable adherence to their own (pre-announced) year-on-year TAC change projections.
- The European categorization and hierarchy of trains should be defined and introduced into the legislation in place of ambiguous categories such as “rate of return which the market can bear” and the definition of “market segments” which can potentially bear higher access charges.
- Infrastructure managers should be obliged to regularly report on punctuality and average speed per train category.

2. Ensuring fair conditions for competition within the rail sector

The draft addresses a series of other aspects of the First Railway Package of which UIRR’s examination was focused on those that are most important to the competitiveness and success of long distance (border crossing) rail freight services – most relevant to Combined Transport operators represented by UIRR.

2.1. Reinforcement for “management independence” (Articles 4 and 5)

UIRR welcomes the concept of reinforced independence guarantees for rail infrastructure managers as foreseen in the draft. The purpose could even be better achieved if **mandatory annual reporting was prescribed for every infrastructure manager** with elements that underscore the level of management independence: i.e. a separate section where the relevant provisions of the Articles of Association are analysed and proof is given that management’s freedom to act is guaranteed like the maximum value of own account decisions allowed for the Board of Directors and the Chief Executive Officer.

2.2. Regulatory accounts (Article 6)

All measures enhancing the separation of rail infrastructure management and operational activities (of incumbents) should be applauded; nonetheless, as a matter of principle, UIRR holds that **no railway undertaking should be permitted to have any specific (ownership-type) relationship with an infrastructure manager**. While separation of accounts has only a limited effect in this respect, it should nevertheless be strictly monitored; the legislator should also require that besides the regulatory bodies **the independent auditors of rail infrastructure managers extend their annual inspection of the IMs’ financial statements with these aspects of accounting separation**.

2.3. Infrastructure development strategy (Article 7)

Whereas the draft mentions the obligation to publish an “infrastructure development strategy with a view to meet future mobility needs”, UIRR feels that the term “mobility” implies too much passenger transport, and not enough freight, therefore it suggests **changing the wording to “mobility and freight transport needs”**.

2.4. Review of cross-border (intergovernmental) agreements (Article 14)

UIRR supports this provision of the draft as it will clearly contribute to removing those obstacles of competition which are embedded in these agreements.



2.5. Authorised applicant status (Article 41)

UIRR has been a long-time proponent of **extending the authorised applicant definition to – among others – Combined Transport operators**, which, as is gladly observed, the draft contains (Article 3/12). UIRR continues to strongly support this amendment.

2.6. Reinforcement of regulatory bodies and the increased role of the European Commission/European Railway Agency (Article 57)

UIRR supports the new provisions which are designed to reinforce the independence, capacities and capabilities of regulatory bodies, as well as improve their functioning by new requirements of cross-border cooperation supported by the European Commission (the European Railway Agency).

Recommendations:

- Management independence should be demonstrated each year through reporting obligations thereof.
- The independent auditors of infrastructure managers should be required to inspect and provide a comment on the separation of accounts in their annual reporting.
- Infrastructure development strategies should be developed with a view of future mobility and freight transport needs.

3. Reducing the inequality between the comparative competitive conditions of different modes of transport

Whenever legislating changes to the economic conditions of one mode of transport, rail in this instance, the effect of the proposed amendments on the relative competitive balance with other modes must also be taken into account. The current proposal contains three such relevant points: (i) the year-on-year change of TAC versus road tolls, and the respective method of how their levels are decided from one year to the next (see 1.2), (ii) the issue of internalisation of externalities (see 1.3), and (iii) the level of transparency of each mode of transport (see below under 3.1)

3.1. Enhanced monitoring of rail transport (Article 15)

UIRR especially welcomes any and all (legislative) measures which result in greater transparency of the rail market as it strongly believes that transparency is one of the most effective tools to resolve many issues of competition and quality. **The proposals made in this paper under 1.1.2, 1.1.3, 1.5 and 2.1 are to be understood as amendment proposals to Annex IV detailing the Member States' rail-related reporting obligations.** Moreover, UIRR recommends that the freight (tkm) and passenger (pkm) reporting obligations are **expanded by the 'average distance' covered** by "international" (coming from or going to a point outside a Member State), "transit" (a train crossing the borders of a Member State both upon its entry and exit) or "national" (or domestic train, which does not cross any borders) trains travelling on the concerned Member State's network. For comparison sake similar data should be collected in UIRR's view on road transport as well.

Recommendation:

- The enhanced monitoring of the European rail market should be expanded with additional reporting requirements on (i) the gap between design and actual performance parameters of the infrastructure elements under management, (ii) the relative levels of TAC/rail tkm and road toll/road tkm in the concerned Member State, (iii) punctuality and average speed, (iv) proof of management independence and (v) average distance travelled per train category within a given year.