



Position Paper: The EC's Fourth Railway Package

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On 29 July it will be 21 years since the first Directive (1991/440/EC) opened a long list of European legislation adopted with the aim of **integrating the European railway system into a competitive single market**, as well as to increase its efficiency and competitiveness.

European transport politicians have already then recognised that

- Separation of infrastructure management from railway operations,
- Ensuring management independence,
- Providing discrimination-free access to the rail infrastructure, and
- Improving the financial structure

are the key ingredients to revitalising the indispensable railway sector for the well being of the entire Continent.

What do we find after more than two decades?

- **Few newcomers** translating to a limited choice of alternatives for freight customers – especially if wishing to run cross-border services – while the dominance of incumbent (state owned) railway holdings continues that remain in **control of vast portion of traction capacities, and – through which – the entire market.**
- **Quality problems persist;** there is consistent stagnation in the average quality of rail freight services possible on the European network (with the exception of a few lines). **Very limited progress** in punctuality and reliability, as well as the maximum allowed train length and weight, interoperability and smoothness of operation.
- **The cost of accessing the network have not changed, but the quality of infrastructure declined** from a freight perspective, as the real value of public infrastructure financing declined, while the maintenance backlog expanded.

In the meanwhile Europe has come to the awakening that

- A **high ecological price** (counted in climate change, local pollution, landscape and biodiversity destruction) is attributed to the proliferation of (road) transport, while
- (Road) transport-related accidents result in a **substantial human toll**, and
- Congestion, oil dependency and the land needs of transport translate into previously **unimagined demands on society.**

Against this background the European Commission is presently gearing up to propose yet another round of rail legislation, bundled into a “Fourth Railway Package” that is supposed to offer a remedy to the regulatory deficiencies of the sector. UIRR, the organisation which represents road-rail Combined Transport companies from across Europe since 1970, hereby expresses its position on the issues likely to be contained in the Fourth Railway Package, and intended to improve the framework conditions of the most important group of rail freight users: Combined Transport operators.

General approach

UIRR has constructively encouraged the European legislator's efforts over more than two decades to revive the European railway sector and boost its competitiveness. This is manifested in a number of concepts such as a one-stop-shop approach for obtaining train paths outlined in the Regulation for a European Rail Network for Competitive Freight (913/2010/EC), and called for by UIRR in a position paper as early as in September 1997¹, while viewing a “complete institutional separation” as the sole guaranty for equal competitive conditions for rail operators in a position paper issued in February 2000².

¹ Güter-Freeways, September 1997 (<http://uirr.com/en/media-centre/press-releases-and-position-papers/1997/mediacentre/527-freight-freeways-position-of-the-ct-operators.html>)

² Combined Transport and Rail Liberalisation: from Theory to Practice, February 2000 (<http://uirr.com/en/media-centre/press-releases-and-position-papers/2000/mediacentre/519-combined-transport-and-rail-liberalisation-from-theory-to-practice.html>)



Behind such a setting, UIRR offers its positions on four prominent topics: structural separation, reinforcement of the European Railway Agency, a European Rail Regulatory Body and measures to enhance rail service quality.

The issues

1. **Structural separation, or the introduction of a single (uniform) business model for incumbent railways and infrastructure managers: not a goal in and for itself, but a potentially powerful and elegantly simple means to a desirable outcome.**

Whereas UIRR called for an end to “privileged (ownership-type) relationships between railway undertakings and infrastructure managers” in a 2011 press release³, it is recognised that loud argumentation is being brought forward in defence of maintaining the integrated (state-owned) railway company model in Europe. This led UIRR to develop the following alternative measures, which may neutralise these “privileged relationships” in case the option of complete structural separation would not be chosen by the European legislator.

1.1. **Essential business function of infrastructure managers:** in order to pre-empt the holding's “undue interference” with fair and equal access to the rail network the legislator is recommended to define the minimal (or essential) business functions that the infrastructure manager arm (subsidiary within a holding) should possess. These essential functions should encompass every activity, resource and competence related to: planning, building and maintaining the rail network, as well as operating the traffic on it (including – among others – the timetabling, train path allocation and traffic management responsibilities). Comparable business structure would enable the introduction of standardised key performance indicators (KPIs) to measure performance making Pan-European benchmarking possible.

1.2. **Regular consultation with operators and major user groups:** Infrastructure Managers should not only be required to regularly – at least twice a year – hold public hearings for their operators (with the attendance of their national regulators), but they should be required to publish the observations (results) of such meetings in their annual reports (or in other forms of official publication). Every stakeholder (client) including those “path owners” contained in the *Register of Path Owners* should be invited⁴.

1.3. **Equal and discrimination-free access to the infrastructure:** infrastructure managers retain several means to prevent independent operators from engaging in ‘undesirable’ activities including the likes of belated quotes, the intransparency of pricing (application of byzantine track access charging schemes) resulting in unexplainable prices, etc. Quality criteria (key performance indicators) should be defined to monitor infrastructure managers’ performance in this respect.

1.4. **Enhanced transparency through regularly monitored indicators:** whereas national governments (and politicians) continue to dominate the management of (state owned) integrated railway holdings, and this type of influence is best controlled through transparency the mandatory regular reporting of indicators such as (i) what portion of traction capacity (locomotives) registered to run on a Member State's network is controlled by the incumbent, (ii) what is the average track access charge (and related charge) payment per tonne-kilometre of the incumbent operator in contrast to the other operators, and (iii) what is the ratio of granting train paths to the incumbent's application vis-à-vis the others' (rejection ratio).

1.5. **Personal conflicts:** undue influence in a regulatory environment which fundamentally prohibits such behaviour is typically wielded through persons, decision-makers, who fulfil positions (hold responsibilities) in both the operator and infrastructure manager arms of a railway holding. Such conflicts were proposed to be eliminated within the initial European Commission proposal of the recast of the First Railway Package⁵, which provisions unfortunately were lost in the legislative process. UIRR maintains that such conflict of interest rules would be necessary in case of the prevalence of integrated railway holdings.

³ Recast of the First Railway Package, 3 March 2011 (<http://uirr.com/en/media-centre/press-releases-and-position-papers/2011/mediacentre/414-pospap-recast-first-rail-package.html>)

⁴ <http://uirr.com/en/media-centre/press-releases-and-position-papers/2010/mediacentre/287-position-paper-on-issues-of-rail-infrastructure.html>

⁵ Article 13 of COM 2010/475



1.6. **Traffic management:** the quality parameters of a train path are unclear especially when it comes to guaranteed average speed and punctuality. Most complaints of CT clients relate to unreliable forecasting of the arrival times and the subsequent periods of waiting, loss of terminal productivity and the ultimate competitiveness of the entire transport service. UIRR proposed the introduction of European train categories and their hierarchy as early as in 2010⁵. The responsibility of Member States to maintain the nominal technical parameters of their rail networks, which are the proprietors of rail infrastructure, should also be declared⁵.

Considering the complicated regulatory solutions needed to eliminate the privileged relationships between infrastructure managers and incumbent railways (listed in 1.1-1.6), UIRR remains of the conviction that the simplest and most effective solution to these issues remains mandatory structural separation.

2. Reinforcement of the European Railway Agency

The European Railway Agency fulfils a number of essential functions needed for the seamless functioning of the Single European Railway Area, however its functions vis-à-vis the National Safety Authorities and National Accident Investigators needs complementing to reach full functionality.

2.1. **Rolling stock type-approval:** whereas a truck, or other road vehicle, homologated in Europe sees little or no difficulty when crossing from one EU Member State to another, the same – after more than two decades of European rail legislation – can not be said of railway rolling stock, and in particular traction units (locomotives). These require lengthy and costly type approval procedures within every Member State adding unacceptable additional amounts to rail operators' costs. A one-stop-shop type approval of railway rolling stock certified to circulate in the entire Single European Railway Area is needed.

2.2. **Inconsistent Member State regulation of national safety authorities (NSA), guaranty of their capabilities, resources and independence:** The European Commission lacks the necessary resources to adequately monitor the legislation on NSAs in 25 Member States which operate a rail network. In UIRR's opinion only the ERA, if equipped with the necessary license, could apply preliminary control of implementation legislation of Member States prior to their adoption to ensure the NSA's independence. The ERA could also confirm the adequacy of the NSA's annual budgets and activity plans to guaranty its wholeness.

2.3. **Appeals body for NSA decisions:** some national safety authorities exercise their authority frequently with a degree of 'local bias' motivated by the intention of protecting their national rail sector. An NSA decision may be challenged at a range of bodies, depending on the respective national legislation, from national transport safety authorities to the ordinary courts, but neither is better positioned to pass a more qualified judgment than a professional ERA could. Consequently UIRR proposes to authorise the ERA to act as an appeals body to an NSA's decision. Moreover, the ERA could regularly report on the performance of NSAs.

UIRR supports the extension of ERA's mandate with the implementation of TSIs and the supervision of national safety and accident investigation bodies.

3. Regulation of Europe's rail sector: creation and possible functions of a European Rail Regulator.

The capabilities, influence and subsequently the power of national regulators differ from Member State to Member State, as much as the legal environment of rail itself. This diversity may harm the emergence of new entrants, the development of competition, and ultimately the improvement of competitiveness of rail in general. UIRR has already called for the reinforcement of national regulators' abilities in a position paper in 2011⁴; presently it wishes to outline the reasons and mission for a much needed European rail regulatory body.



- 3.1. **Cross-border issues:** the obligation of Member States to notify the European Commission on the incriminated bilateral agreements is important to eliminate efficiency-undermining government-supported bilateral railway agreements⁶. Among others these agreements result in many more than technologically necessary locomotive and/or driver changes when crossing borders, resulting in longer transit times and an increased likelihood of delays and disturbances. These bilateral railway agreements should be much more closely scrutinised and controlled, for which the European Commission is not adequately prepared (staffed). Since national rail regulatory bodies have no jurisdiction over issues covering another Member State, only a European Regulatory Body could fulfil this task with adequate authority and oversight.
- 3.2. **Inconsistent Member State regulation of national rail regulators, guaranty of their capabilities, resources and independence:** Member State regulations implementing the requirements of Directive 2001/14/EC on national regulatory bodies are highly divergent. The European Commission is lacking the necessary resources to adequately monitor the implementation legislation of 25 Member States which operate a rail network. In UIRR's opinion a European Regulatory Body, with a license to apply preliminary control of implementation legislation of Member States prior to their adoption, could materially contribute towards the national rail regulators' independence.
- 3.3. **Unified supervision to lead to a unified track access charging regime:** implementing the recast European rules – that still allow a wide variety of charge calculation methods – is the only way UIRR sees for a converging methodology of calculation and categorisation of track access charges in Europe, and to harmonise the national regulators' approaches to the issue. A European Regulatory Body could be best positioned to develop studies and argumentation that is to support the national regulators' work in this respect, including guidelines on interpreting the concepts of *market segmentation*, *noise surcharges* and *ERTMS discounts*, etc.
- 3.4. **Inconsistent regulatory procedures by national regulators:** the voluntary collaboration of national regulators should be supplemented by the possibility for them to participate in the general assembly of a European Regulatory Body (much alike to the Member State national bank governors' membership in the assembly of the European Central Bank). Through this mechanism a European Regulator could not only ideally develop common European approaches to common regulatory issues, but also discuss and disseminate these to the national regulators dealing with the daily issues of regulation.
- 3.5. **Time consuming appeals to rulings of national regulators by the courts/judiciary system, which lacks professional knowledge needed to resolve most disputes:** the appeals procedure of decisions by the national regulators are presently received by a range of bodies from national transport authorities to courts of justice; neither is better positioned, in UIRR's opinion, to pass more qualified judgment than a professional European Rail Regulator could. Consequently UIRR proposes to authorise the European Rail Regulator to act as an appeals body to a national regulator's decision.
- 3.6. **Inefficient monitoring of developments in the rail sector:** national rail regulators are charged with drafting and publishing regular reports on the development of the rail sector, and competition within it in particular. These reports however would only be truly useful if someone summarised them into a single European rail sector report, much alike to the European Railway Agency's annual report on rail safety performance. The Rail Market Monitoring Scheme presently operated by the European Commission aims to address this issue but with limited results. A European Rail Regulator could be much better positioned to report on the status of the European rail sector, and the activities of the national regulators within it.

UIRR is of the opinion that the creation of a European Rail Regulator – with the functionality listed in 3.1-3.6 above – would organically complement the Single European Railway Area foreseen by the European Legislator, resulting in the reinforcement and genuine independence of national regulatory bodies.

⁶ See Section 5 (Article 14) of the recast of the First Railway Package on “cross-border agreements”



4. Measures to improve the quality and reliability of railways

Whereas rail freight may be most competitive over long(er) distances, and therefore these transport-chains – in theory – should be designed to use rail freight from the beginning, this is not the case in several instances (even when rail infrastructure would be available) due to the problems with the quality and reliability of rail freight. Consequently the first choice when designing these types of long(er) distance transport-chains is frequently road, while rail freight (Combined Transport) is only considered if adequate road capacities are not available. The regulatory framework could include measures, which would have a positive effect to enhance the quality and reliability of rail.

- 4.1. **Creation of a European level rail network manager:** a body or entity to coordinate the long(er) term maintenance and/or development plans national infrastructure managers could more effectively ensure that adequate capacity remains available along maintenance sites in every (major) direction and for every user group, or alternatively facilitate the definition of suitable bypass routes well ahead of any potentially disturbing maintenance works. Simultaneously such coordination could guaranty a more homogeneous development of the rail infrastructure network and capacities.
- 4.2. **Discrimination-free access to every transshipment terminal:** whereas transshipment terminals are important elements of the network, the status of such terminals can be quite different from other elements of the rail infrastructure as they are on occasion not owned by public entities, or not operated under a contract with a public entity (the State), while these (private) transshipment terminals may on occasion receive public financing, or other form of public support. Irrespective of the ownership status of terminals, it is UIRR's conviction that discrimination free access should be made possible to any public-financing recipient terminal in a transparent way for every Combined Transport operator. This can be easily achieved if terminals are required, as a pre-requisite to obtaining their operating license, to prepare and publish a set of rules on access and applicable charges, in a similar fashion to a (simplified) Network Statement. The existence, contents and execution of such rules should be overseen by the national rail regulators of the respective Member States.
- 4.3. **Inventory of assets managed:** every infrastructure manager should be required to draw up and regularly update such an inventory list containing (i) the nominal or design parameters as stated in the permits permitting the operation of the given infrastructure element such as maximum allowed axle load, rail gauge, maximum allowed track speed and train length etc. and (ii) the actual parameters in comparison with the design parameters as determined by the infrastructure manager; figures at or below the nominal 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 an acceptably high ratio of punctuality commensurate to the technological reliability potential of rail. Moreover, any deviation between design and actual parameters of infrastructure elements exceeding a declared value (e.g. '10%' or less) should be reflected as a discount factor of the track access charge applicable on the concerned section.
- 4.4. **Transparency – reporting – requirements to complement performance regimes:** monopolistic activities such as rail infrastructure management are typically heavily regulated and ultimately supervised by political bodies, like ministries. Transparency (the regular reporting of potentially embarrassing quality statistics) can effectively supplement the performance regime prescribed penalties, which are to be paid to operators in case of delays and disturbances. The European legislator should require infrastructure managers to publish on a monthly or quarterly basis the most relevant quality indicators referring to every category of train traffic performed on their network.

It is UIRR's conviction that the requirements proposed above would have a considerable positive effect on railway performance, enhancing the reliability and quality of the service, and thereby materially contribute to enabling the European rail sector to assume the increased transport responsibilities stemming from the modal shift aims of the 2011 Transport White Paper.



Recommendations:

- Structural separation remains the most elegant and simple legislative solution to achieve the desired outcome, but detailed regulation of six areas (listed in 1.1-1.6) can offer a second best solution.
- The reinforcement of the European Railway Agency's licenses – with the functions detailed in 2.1-2.3 – is needed to create an effectively functioning Single European Railway Area.
- A European Rail Regulator would also be needed – with functions as listed in 3.1-3.6 – to supplement a well functioning Single European Rail Area.
- Four additional measures (4.1-4.4) are proposed that could beneficially complement the European regulatory framework of the rail sector resulting in the enhanced competitiveness of rail freight through an improved quality and reliability of service.

Road-rail Combined Transport⁷ 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 produced over a third of European rail freight tonne-kilometres in 2011.

Combined Transport emits about 75% less CO₂ and produces fraction of the transport-related externalities as compared with a pure road transport-chain. The inherent technological capabilities of Combined Transport make this system of single load forwarding ideal for delivering the modal-shift targets of the European Union.

The average Combined Transport consignment covered 630km-s on rail in 2011, while over 80% of CT traffic took place on cross-border relations using the network of at least two Member States. Consequently UIRR members are key buyers of long distance rail freight services in Europe, and as such are very much interested in the emergence of the Single European Rail Area that the European Commission envisions.

⁷ Two types of road-rail combined transport are differentiated: (i) accompanied, or rolling-motorway, services, when complete tractor-trailers road-trains are transported using specialised rail wagons, and (ii) unaccompanied, when goods packed into containers, swap-bodies or semitrailers are transferred from road vehicles to trains.