

THE SECOND RAILWAY PACKAGE

“Towards an integrated European railway area”
COM 2002 (18)

Position of the Community of European Railways

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1. Introduction

The Second railway package was adopted by the European Commission on 23 January 2002, following the September 2001 publication of the White Paper "*European transport policy for 2010: time to decide*".



The Package consists of a Communication from the Commission to the Council of Ministers and the European Parliament, with the title "*Towards an integrated European railway area*" and includes five immediate legislation proposals.

This CER paper is an *initial* position on the Package. It discusses the five immediate proposals for legislation, and comments on the contents of the accompanying Commission Communication to the Council and the European Parliament. The CER reserves its final position pending further analysis of the texts received and future consideration of any specific legislation proposed.

2. Overview

The CER takes a positive view of the aims of the Second railway package in overall terms. It is intended to support the ambitions of the White paper to transfer traffic to the rail mode in the context of sustainable development. The CER endorses the policy intention to revitalise the rail sector (in particular, freight), to reinforce the potential for modal shift. There is a need for continuing improvement to meet market requirements.

The measures set out in the Package will only make a real difference if accompanied by the change sought in other areas of the White paper. It is essential for example that the cross-modal framework directive for charging referred to in the Communication is successfully developed and implemented: otherwise, the objectives of both the Package and the White paper would be undermined.

There are risks in the level of emphasis on the contribution to rail freight growth from "new railway companies from other [business sector] backgrounds". The CER notes the principles of market liberalisation and regulated competition which the Commission sees as inherent in rail revitalisation: but the Package underestimates the existing railways' business oriented approach and the value of their network-wide services. It does not always acknowledge the business and social conditions within which the railways have to operate, in particular the long-term effects of varying national approaches to historic debt management, investment and public service funding.

3. Immediate proposals for legislation

The Communication presents five proposals:

- a proposal for a regulation establishing a European Railway Safety and Interoperability Agency
- a new directive on the regulation of safety and investigation of accidents and incidents on the Community's railways
- a proposal to amend Directives 96/48/EC and 2001/16/EC on the interoperability of the European High-Speed Rail System and on the interoperability of the trans-European conventional rail system
- a Commission recommendation for a Council Decision authorising the Commission to negotiate the conditions for Community accession to the COTIF
- a proposal to amend Directive 91/440/EEC to open up access to the infrastructure for national services in order to open up the rail freight market completely.

The CER initial response on each one is explained below.

(i) Regulation creating a European Railway Agency

The CER views positively the Commission's concept of a Rail Agency for safety and interoperability. The CER recognises that the creation of a European railway market and the need to apply EU legislation require a shift of regulatory responsibilities from the railway sector to national and EU bodies while respecting subsidiarity and proportionality principles.

The Agency, supported by the work on interoperability and safety of the AEIF (European association for railway interoperability), could ensure the coherence of both tasks, and ensure that technical standards deliver harmonisation, innovation and value for money whilst protecting the safety cost/benefit relationship.

However the CER has significant concern about the text proposed for the Regulation. It does not yet clearly deliver the appropriate division of responsibilities for regulation, standards setting and service delivery between this new public body, national bodies and the railway community. The legal and economic accountability for the decisions made in each of these areas of activity, and the consequential safety liability, must be clearly established.



Creating the Agency must under no circumstances lead to a duplication of responsibilities already held by existing national authorities. The responsibilities of those authorities will have to be carefully reviewed against the Agency proposal.

The Regulation needs to include transparent rules ensuring the involvement of the rail sector. It must:

- explicitly set out the role of railway industry professional experts - AEIF - in managing interoperability standards development and the link with safety, and

require contractual mandates from the agency to the rail industry's joint representative body. This would ensure that the standards themselves are the product of sector professional expertise, within a European regulatory framework;

- avoid costly duplication of work between Agency and the sector, and the resulting inefficient use of scarce competent resources;
- make explicit provision for input from professional bodies such as the UIC and the CER for the technical measures following up EU railway legislation. A specific example is the scheme for a European train driver's licence, which the CER is developing now in support of interoperability development.



(ii) The Safety Directive

The CER supports the policy intention of the Directive and the progress made with its development. Some questions remain to be answered at the detailed level, including:

- the need to ensure that the harmonisation process required by the Directive – and supported by the CER – does not result in an accumulation of the highest existing national safety standards;
- the need for a cross-modal approach: it is necessary to preclude a further widening between the requirements for road and rail transport which could worsen rail's competitiveness. Socio-economic assessments which take on board the positive effects of the rail mode in terms of safety – as an important supplement to “cost-benefit” analyses restricted to a given mode – are needed to support decision-making;

- the roles, responsibilities and liabilities of the various parties – in particular the infrastructure manager – are still insufficiently defined in the context of the overall safety of the railway system. In addition to European and national rules the infrastructure managers and railway undertakings must be able to establish the operating rules necessary for system cohesion in a safety management system;
- rail companies must remain responsible for developing their own standards. This is consistent with their safety duties under the Directive, and with the fact that railway standards are compiled primarily for business purposes (although they must of course meet safety requirements). Safety standards are an inseparable subset of engineering, operations and business standards. This practical consideration is absolutely consistent with regulation of the standards process by a safety authority. Such an arrangement has proved successful on the American continent;
- assurance that decision-making remains as close as possible to the point of responsibility for the financial consequences.

(iii) The Directive amending interoperability Directives 96/48/EC and 2001/16/EC

The CER sees the further development of interoperability as an essential element of rail revitalisation.

Based on experience with high speed interoperability, the CER shares the Commission's view that better direction, more robust process and a focus on the prime economic objective is needed to ensure the Directives' aims are achieved. It is easy to misunderstand or misrepresent the scope of interoperability's potential, without acknowledging or tackling the very real funding problem. Above all, it is essential that all initiatives deliver a net reduction in industry cost without compromising safety.

While the principle of extending interoperability to the whole network is understood, particular care is needed to ensure that the development of interoperability for conventional rail is carefully assessed and demonstrably proportionate to the business benefits. Provision should be made for certain peripheral routes and suburban railways to be excluded from the scope of the Directive, where they are not relevant for international traffic and where operation with simplified standards is necessary to safeguard the profitability of such routes.

More emphasis is needed on the transition phase between national rules and TSIs (Technical specifications for interoperability).

The work necessary to address these issues needs to be framed by the new Directive and carried out on a joint basis between the proposed agency and the competent stakeholders. It is therefore an unacceptable step backwards that the new Directive no longer makes explicit reference to participation of the Joint representative body (AEIF). This contrasts with continuing references to user and social partner consultation. It is essential to define transparently the means of involving the Sector, to ensure that its representation is respected. This should be

done through a procedural regulation, including for example the reporting of the AEIF expert proposals to the Commission and direct AEIF participation in ERA working groups to the EU Commission.

The CER will review (together with the AIEF) the specific amendments proposed against experience to date and will comment in more detail in a future position statement.

(iv) Recommendation for a Decision authorising the European Community to join OTIF

The CER notes the arguments presented by the Recommendation for OTIF membership. The railways want any shift in emphasis on international transport legislation to support their continuing business development and minimise bureaucracy.

(v) Proposal for a Directive amending Directive 91/440/EEC

The CER will give careful consideration to the proposal during the legislative process.

Because of the different institutional, government policy and funding frameworks in the Member states, there are varying views on the issue. The CER does not therefore take a common position on the question of further rail freight market liberalisation.

However, it is very disappointing that the White paper thinking on measures to support national company restructuring¹ is not to be found in the Package.

4. The EC Communication – Future actions

The CER recognises the wide-ranging list of possible future actions described in Section 2 of the Communication as a challenging proposition for all the parties involved in rail regeneration. Preliminary comments on the future actions proposed are set out below. Where appropriate the CER will comment more comprehensively at a later date. To do so it will need to study the detail of any future legislative text proposed.

Cross-modal infrastructure charging

The Commission includes the proposed framework Directive in the list of future actions. The CER urges its immediate preparation and timely implementation as an essential ingredient in the overall Package. It will actively support its development. Further comments on this important measure are included in the Annexe to this paper.

Freight revitalisation

¹ Guidelines, Section VI ; Part 1, Section 1, B1(a).

There are more than twenty freight measures – concerning freight transport quality and systems improvements, entry barriers, infrastructure and environmental issues – many of which seek initiative from the railways themselves. The CER has started to establish how the sector can contribute to the process within the present business framework.

The CER acknowledges the scope for freight service quality improvement. The sector intends to propose a package of initiatives and commitments to improve freight customer service quality. Any compensation regulation proposed by the Commission should take full account of the sector's own initiatives: it should respect the scope of the Commission's involvement in quality provisions and incentives in commercially negotiated contracts in other transport and consumer sectors.

The CER reserves its position on the future actions concerning freight market entry (in particular authorised applicants and access to essential services) pending its review of any legislative text proposed. However the CER firmly rejects any possible inclusion of rolling stock within the scope of essential services, as might be inferred from certain sentences in the Communication. There are offers available on the market, and each operator has to negotiate with the industry as a whole on a commercial basis.

The sector will support the Marco Polo freight intermodality programme and will examine the concept of developing a freight integrator profession.



Environmental commitment

The CER fully recognises the importance of the environment to transport policy: the sector welcomes a dialogue on the development of a voluntary agreement to reduce certain adverse environmental impacts of rail transport, specifically emissions from

diesel traction units and railway noise. These impacts are nevertheless relatively small compared with the environmental effects of other modes.

Dedicated rail network for freight

The CER supports the policy concept of dedicated rail lines for freight. The proposal is a key part of both the intention to revitalise the rail sector and the thinking behind the trans-European (TEN-T) network revision and bottleneck management. A dedicated rail network would in principle deliver very substantial improvement in freight quality and reliability (with consequent benefits for rail passengers). As the Communication acknowledges, current route capacity constraints and priorities play a significant part in reducing rail freight quality and competitiveness.

However the 'headache of funding' means that the proposal needs careful handling. Even with the infrastructure charging measures proposed, a mixed-traffic railway will remain the norm in the short to medium term. Basic geographic considerations, and the wide variety of network configuration, utilisation priorities, and rail freight traffic potential, both point to a pragmatic approach, including for example traffic flow separation where system conditions allow.

The CER believes that the concept should be developed in greater detail, built upon the prime objective of meeting customers' requirements for the suitability (transit and arrival time, etc.) and reliability of the transport offer. The CER will propose an initiative to this effect and wishes to work closely with other stakeholders in its development.

Passenger transport

While the Second package emphasis on rail freight is welcomed, a balance is needed on the specific actions (notably those affecting infrastructure capacity) to take account of local and regional passenger transport and public service considerations.

Any specific measures on international rail passenger transport should recognise existing market conditions and market-led improvements: they should be proportionate to the market segment's potential contribution to the overall policy objective.

The argument in the Communication alleging 'monopolistic behaviour because of customer lack of choice, particularly in the rail sector' does not reflect market realities. Any regulatory measure proposed should be proportionate to the Commission's involvement in matters affecting commercial contractual provisions on service quality in other transport and consumer sectors.



On user rights, the CER has already recognised the business importance of meeting customers' reasonable needs: the sector is already developing a voluntary charter for international passengers, on top of reforms to the existing formal conventions regulating international transport. This builds on national schemes already in place in some member states. This voluntary charter can meet the Commission's objectives on service quality, contract conditions, transparent information to passengers and extrajudicial dispute settlement mechanisms.

Annexe

Cross-modal infrastructure charging

The CER strongly supports the advocacy of infrastructure charging covering external costs (including congestion). It is critical to the modal shift and decoupling sought in the policy. It is essential to place users at the heart of transport charging policy, with the 'polluter pays' principle applied as close as possible to the actual point of use.

However, cars represent the majority of road traffic. It is therefore essential that the private car be included in infrastructure charging if such a policy is to be effective in combating congestion and reducing environmental degradation.

A common set of principles for a charging system (including a scientific basis for establishing internal and external costs) should be established for all modes of transport in each member state of the EU and according to a fixed timescale. The CER commends to decision-makers the calculation methods and values published in the INFRAS / IWW Institute's 2000 study *'External costs of transport - accident environment and congestion costs in Western Europe.'*

Charging measures for commercial transport across all modes should include the distance travelled as a parameter: partial and inefficient measures such as the Eurovignette should be replaced. The system should be supported by clear common rules for, and commitment to, financing the infrastructure costs which are not covered by the charging system. The subsidiarity principle should be applied to the actual use made of revenues generated and when setting charging levels.

The CER supports the Commission's action to establish a Community framework for allocating revenue from charges on competing modes to the construction of new, in particular rail, infrastructure. Related investment decisions should be based on a complete cost-benefit analysis, based on common principles covering all costs and benefits to society, public and private, and taking into account other distortions in competition between modes.

To be efficient and send the right economic signal to users, the internalisation of external costs generated by each mode must be properly reflected in the transport price. This would favour modal shift from road, as road's external costs are higher than for other modes.

However, there is a possibility that raising transport prices to achieve significant societal benefits would cause modest increases in product prices. To avoid placing European industry at any competitive disadvantage, the European Commission proposes to reduce corporate taxation. It is not clear whether this is intended to apply to all companies or just transport companies. The latter, with full

compensation for the effect of internalisation, would run counter to the modal shift intended by the policy. It is also necessary to address any possible extra transitional costs within each sector, resulting from internalising broadly all external costs. The measure will have to be part of an integrated, long-term transport policy development providing the right incentives for customers.

The CER welcomes the concept of a framework directive on charging for infrastructure use proposed as a concrete measure by the Commission. It is ready to contribute its development, building on work already done within the rail sector, and taking into account the lessons arising from the implementation by March 2003 of the relevant rail infrastructure charging provisions of directive 2001/14/EC.