

Rail Freight Group

Briefing for European Parliament on EC's 4th Railway Package:

Better governance of the railways – a freight perspective – 7 May 2013

General

The Rail Freight Group is the representative body of the UK rail freight industry.

Its objective is to grow the volumes of freight carried by rail.

Conditions for Europe's rail freight growth

Rail freight is in competition with road freight, which is the market leader. The road sector is very competitive and innovative; in order to compete and/or cooperate with the road sector, rail freight needs the pressures from competition in rail as well, i.e. the creation of a properly functioning single market in rail.

The single market in rail can only be achieved if:

- There are enough Railway Undertakings (RUs) to provide competition
- New entrants can more easily start up, with less risk to their shareholders
- Competition is fair between all operators

Thus Infrastructure Managers (IMs) must:

- Provide fair access to all RUs to the rail network, to terminals and essential services therein
- Provide fair charging to all RUs
- Co-operate between IMs to ensure seamless movement between networks

To ensure the maximum interoperability across Europe, technical barriers to competition must be removed and, to achieve this, there must be common standards and common authorisations across Europe, all managed by the European Railway Agency but with NSAs undertaking some of the work.

To ensure that the above principles are implemented fairly and consistently, strong

independent regulation is necessary, and there must be strong co-ordination between national regulators. There must also be strong co-ordination between IMs.

The 4th Railway Package

For the above reasons, RFG supports the principles of the 4th Railway Package, as being the best way to achieve growth in the sector. Along with the Recast of the First Railway Package, it will provide the structure in which IMs can be effectively co-ordinated and regulated, to improve efficiencies and ensure fair access. It will also enable more competition between RUs and encourage new entrants.

For *freight*, competition within the sector is as important as competition between road and rail. New entrants bring new ideas, new investment and new services and, in the process, are often the driver for incumbents to improve their performance as well. However, new entrants need the provisions of the 4th RP to be fully implemented in order to provide the open, competitive and transparent structure that will give their investors the confidence to invest for the long term.

We also see no reason why the 4th RP should adversely affect *passenger* services. However, in order to ensure fair access and other conditions, all passenger RUs must be separate from the IMs since, otherwise, it is likely that the IMs will give undue preference to the passenger RUs which it owns or is within the same holding company. This again will add to the risks of new freight and passenger entrants who fear obstructions or unfair treatment. There is much evidence across member states to support this view.

Particular comments on Fourth Railway Package:

Infrastructure governance:

COM (2013) 29 Single European Rail Area, opening of market for domestic passenger services and governance of railway infrastructure

RFG welcomes the texts of this document, but has the following comments in individual articles:

Art 1 amendment to 2012/34 Art 7 Institutional separation of IM is much preferred; it is simple, clear and transparent and provides the basis for a single market for rail services.

Art 1 amendment to 2012/34 Art 7a and b Effective independence of IM within a Vertically Integrated (VI) undertaking. The safeguards proposed to protect the IM's independence and provide comfort to independent RUs are very important, and must be made to work effectively by both the Regulatory Body and the EC. It is extremely important that this clause is not diluted in any way since, without it, the current difficulties and lack of transparency will certainly continue.

Art 1 amendment to 2012/34 Art 7c Procedure of verification of compliance: This needs strengthening. As drafted, it allows member states to limit rights of access to RUs which are part of vertically integrated undertakings to which the IM belongs. This is a useful limitation to the conditions to be applied to holding company models, but does not go far enough. For example, if both two neighbouring Member States are defined as holding company models, they are very unlikely to prevent each other's RU from entering their territory, especially as they effectively own the holding companies involved.

This Article therefore needs strengthening to be effective. We suggest that Art 7c 3 be amended to add powers to allow the Commission and regulators as well as member states to limit the rights of access by RUs which are part of VI undertakings to infrastructure in other member states or to

other, non-VI, IMs. RUs who consider themselves to be exposed to unfair competition from companies who are part of a holding company must be able to submit formal complaints to the Commission, who could then take action against the member state concerned.

Arts 7d and 7e. Co-ordination committees on networks. RFG welcomes these clauses requiring IMs to set up co-ordination committees for each network and to participate with their member states in setting up and operating a European network of IMs. We believe that these are both essential to ensuring that there is full engagement by the IM with stakeholders and governments, and that there is a consistent approach between IMs to issues of concern. This is also an important forum for exchanging best practice, in a similar manner to the co-ordination of regulatory bodies.

Art 1 amendments to 2012/34 Art 63 Timetable for future actions.

Art 3, 2 Timetable for future actions

We consider that 31 December 2024 is much too far ahead for the Commission to be required to report on the implementation of this Directive, as is the Art 3 2 for provisions of passenger access requirements by 2018 to apply from the timetable change starting on 14 Dec 2019. Both dates are unnecessarily distant, no doubt reflecting the pressure from incumbents and their governments to delay changes for as long as possible.

These changes are not revolutionary and, given a will to change rather than obstruction, it should be possible to make them much more quickly; passenger changes for the timetable change on 14 December 2017 and the Report from the EC by 2020. This will give plenty of time for all to see whether these changes are sufficient or whether further legislation is necessary.

Interoperability and safety:

COM (2013) 27 – Regulation on the European Rail Agency

COM (2013) 30 – Interoperability of the rail system within the European Union

RFG supports the aims of these proposals within the Technical Pillar. Although the majority of rail freight in the UK remains within domestic borders at present, improvements in interoperability will help prospects for increasing international freight. Additionally, and equally importantly, these measures should help UK business seeking to expand into mainland Europe, and also to reduce the cost of developing new equipment for the UK to UK standards.

We note the concerns that changes in particular to the approvals process or standards have the potential to increase costs or risk, compared to the continuing use of national ones for national use only. However, apart from the threat to the status quo, obstructing these changes will not only allow national supplier monopolies to continue, seriously reducing the benefits of interoperability, flexibility of operating trains and of reducing costs.

We therefore believe that the migration of national standards to TSIs should continue with the minimum of delay and with the minimum of derogations. Many requests for derogations come purely as an expression of resistance to change and UK IMs and other companies are as guilty of this as many others. It is of course essential for the ERA to be resourced to continue to manage these processes.

There is also pressure from many member states, including the UK, to resist giving more responsibilities for authorisations to the ERA, citing delays due to lack of ERA resources. We believe that it is essential as part of the interoperability objective to **give the ERA overall and sole responsibility in order to ensure consistent application of standards**. However, in order to speed up the process and reduce the workload on the ERA, the NSA's should be authorised by the ERA to act as its 'subcontractor', using exactly

the same authorisation procedure. There must be only one procedure and one authorisation valid everywhere; who does it is actually a second order issue.

The ERA would of course, also be setting the rules and procedures and carrying out audits on NSAs and on ERA's own authorisation department. So, in practical terms, approvals could be sought from either the NSA or the ERA; there could be competition on charges and performance, but the process would be the same.

There are also interoperability benefits from the above arrangement. The existing framework should already ensure that all checks carried out for first authorisation in one member state must be recognised in the next, (apart from the need to check compatibility with the new network rules, but only those reduced in number and identified in the ERA Reference Document as non-equivalent). However, there are still some concerns here that need further investigation. The benefit of designing and purchasing vehicle types which are authorised in several member states are great; they are easier to finance since there is a higher possibility of continuing use if the market demand in one member state changes. The use of Class 66 locomotives in so many member states is a good example, but this can also apply to freight wagons and passenger rolling stock.

UK experience

Rail freight in the UK has grown by around 60% in the last 15 years. RFG believes that this is due largely to competition between the seven freight operators and many more passenger operators, with total separation and independence of all operators from the infrastructure managers, Network Rail and HS1. Eurotunnel, which also owns a freight company, GB Rail Freight, is currently the subject of infraction proceedings by the EC on its governance structure.

Customers of rail freight appreciate the competitive choice of operators and logistics providers, and the innovation, reduced costs and improved service quality that this brings.

UK freight railway undertakings also operate in some other member states, and comparisons with experiences there influence the policies set out in this paper.

The success of the UK's railway is demonstrated by the European Commission's Report¹ on how the railways in Europe have progressed and improved since the 1990s according to a range of 14 different factors. Britain came top in four of the factors, second and third in another two and fourth in three, coming top overall. Europe's other big rail networks - Germany, France and Italy - came 7th, 10th and 23rd respectively.

Jobs in the railway industry. In 2007, RFG published a booklet 'The successes of the UK rail industry' noting that, between 1994 (before privatisation) and 2004, the number of jobs in the rail industry (excluding manufacturing) remained nearly constant at just over 110,000. Over the same period, passenger and freight traffic grew by >50%.

The opposition to change

RFG is aware of opposition to the changes proposed in the 4th RP. For example:

Let each member state adopt the structure that suits it best. This would be a disaster for international services and affect international freight very badly. The additional costs of national technical, operating and other regulations would make many services uneconomic, as well as causing delays. It should be compared with each member state requiring trucks to have different technical standards requiring prior approval by the relevant national safety institution before they entered the country. It would destroy completely the idea of a single market in the rail sector. Costs will go up, and traffic lost.

Academics state that there is no proven case that vertical separation is better or cheaper. Academic reports frequently reflect the views of those commissioning them. Clearly European mixed traffic railways are different

from many other countries, and there is little experience to compare different models independently. However, the principles of competition and the single market together should give a presumption in favour of separation and fair competition. It works in the UK; there are no plans to change it, costs have come down and service quality and investments increased.

Barriers to entry. Open and fair competition is key to growth in the sector. Given that it must be hoped that many new entrants will be from the private sector, any uncertainty or obstruction may put off their shareholders from taking the risk. The 4th RP is designed to remove as many obstructions as possible; at present, these include:

- Vertical integration – including on-going issues with some Member States' compliance with earlier Directives,
- Different technical standards and national approval bodies, often staffed by ex-IM or incumbent RU staff, who use technical difficulties to delay approvals, particularly for non-incumbents or operators or suppliers from another member state,
- Lack of co-ordination between IMs,
- Lack of responsibility of IMs for all actions necessary to operate the infrastructure.

Railways are different from other industries and therefore need special treatment. Railways are technically complicated, but no more so than air, energy or telecoms. Policy in these sectors is to promote competition and reduce barriers to entry, and, whilst the markets may still be imperfect, the expected benefits are starting to be delivered. Given the demand for more environmentally friendly forms of transport which rail can and should embrace, how can growth be achieved without a real single market in rail?

Next steps

RFG will discuss the above issues and concerns with other European and UK groups to seek common positions where possible, and draft more detailed comments and amendments for discussion with EP TRAN rapporteurs and other members.

¹ Commission Staff Working Document, <http://www.networkrailmediacentre.co.uk/News-Releases/Most-comprehensive-European-rail-comparison-study-published-1cf6.aspx>

