

14<sup>th</sup> July 2015

## **ERFA Open Letter to Commissioner Bulc – 4<sup>th</sup> Railway Package: Governance pillar**

Dear Commissioner Bulc,

The 4th Railway Package negotiations are entering a new decisive phase after the successful developments of the technical part in June and the progression of discussions on the political pillar under the Luxembourg Presidency.

We fully support you and your team in endeavours to finalise the Railway Package and by doing so keeping it together.

Our freight and passenger railway undertakings follow the evolution of the package closely, as it will be decisive for their business and service offerings in the future and for the competitiveness of the rail sector as a whole.

We noted the latest proposal discussed in Council and we consider that several provisions will lead to the retention of many advantages for certain railway structural models as well as to serious risks for many seeking to develop a competitive market. Examples include:

- Alleviation of (financial) independence duties within integrated railway groups
- Increased possibilities for bilateral co-operations amongst IMs and some RUs
- Outsourcing of all functions, including essential functions of the rail infrastructure manager
- Downsizing the competencies of the Co-ordination Committee

In terms of the freight business overall, this may lead to a situation in which:

- Vertically integrated railway undertakings can continue to protect and even to cross-subsidise their integrated rail freight and passenger operators to the detriment of their direct competitors and therefore negating the effects of market opening.

- Bilateral cooperations between IMs and RUs will be to the detriment of those running in competition to these cooperations arrangements. Even if the requirement is that this should be done without discrimination, we have concerns that the regulator does not have the competencies or resources to ensure regulatory oversight.

- Infrastructure managers in the rail sector can be asked to outsource ALL their functions; this could create a bureaucratic nightmare for the users of the rail network, especially if Member States decide on different arrangements, taking us far away from the concept of a single European railway area.

ERFA urges that, as a minimum, in order to counter the multiple layers of bureaucracy created by this fragmented situation, **the infrastructure manager should be the one single responsible body and interface for all the necessary functions**; the extent to which it subcontracts any of these to other bodies can be decided by the member state. This has the advantage that Member States are free to follow whichever model of infrastructure management they prefer, while ensuring that the users of the rail network are not disadvantaged by the fragmentation. The IM becomes a “one stop shop” for all contact that Railway Undertakings and other bodies need to have with its functions.

We also regret that the coordination committee necessary to start an open and fair dialogue between all customers of the infrastructure manager has been reduced in scope and mandate, making it barely of any interest for the users of infrastructure in terms of reporting duties and fair and relevant access to information.

Overall, we fear that the current proposal on a new governance structure is very much a step backwards to the past, where integrated railway operators have more competitive advantages over others and where the infrastructure manager is not strengthened in the interest of all but weakened to the disadvantage of many.

Customers, forwarders, shippers, ports, airports, etc. will certainly struggle to understand the business advantage behind this approach and may prefer to turn to road or other modes again, where all the processes are so very much simpler. It will of course make even further away the achievement of the targets for less polluting transport in the White Paper.

We are happy to explain our concerns more in detail to you and to your services. We have consulted the wider railway sector and shall certainly take a wider position on the governance proposals.

In the meantime, we urge you to act and to support a competitive European rail market.

Yours Sincerely,



Irmtraut Tonndorf

ERFA President



Julia Lamb

ERFA Secretary General