

16th June – deliverance day for the Recast Directive:

ERFA expects significant progress in the rail sector

16th June 2015 marks the date when provisions to support a more competitive and growth-orientated rail sector come into force in all EU Member States. The so-called Recast Directive 2012/34/EC finally takes effect. By today, all Member States should have translated the European directive into national law. ERFA hopes EU Member States will ensure timely and effective implementation of the many legal obligations, thereby supporting rail to achieve ambitious growth targets and play a central role in the sustainability of the transport system.

ERFA, representing newcomers on the European rail market, expects significant progress in the rail sector from the Recast. Many of the new measures can help to attract more and new customers to rail. The rail newcomers have often struggled against the out-dated structures that still prevail in the rail sector and that hark back to an era when national rail monopolies were the norm.

For real results-orientated impact of these legislative changes ERFA counts on the national governments to not only abide by the letter of the law, but also its spirit. Customers, society and the environment must win from these changes if rail is to have a credible future in Europe.

A race to the top – how to improve quality of rail services

All national rail systems are expected to introduce an effective performance regime, one that incentivises reliability and punctuality of rail services. Obliging infrastructure managers and railway undertakings, via financial incentives, to take steps in order to minimise disturbances and disruption on the rail network can help improve the attractiveness of the rail sector for customers. ERFA points to the UK system, which has already gone one step further, in attributing responsibility for force majeure cases (such as suicides, cable theft) to the infrastructure manager, encouraging a pro-active approach to finding solutions in order to minimise delays and disturbances on the rail network.

A rail Regulatory Body that has bite

It is not enough for rail regulators to exist in the Member States - they must be effective, independent and have some backbone. ERFA stresses that national governments must from now on give their rail regulator staff and resources that are proportionate to the importance of the rail sector, and give them the means necessary to actively intervene against unfair competition. Complaints will no longer get “lost” or be left hanging as regulators have to respond within one month of having received a complaint. ERFA also welcomes the fact that regulators do not even need to wait for complaints, as they have the power to monitor the functioning of the market and intervene on their own initiative. Another important change is that in order to prevent conflicts of interest jeopardising the work of the regulatory body, any persons

making decisions within the regulatory body must be appointed under clear and transparent rules and make a declaration of interest on an annual basis.

An infrastructure manager with a business plan

Newcomers on the rail market often complain about the lack of user-focus of the infrastructure manager, which has an impact on the quality of services. With the new changes in place the infrastructure manager has a minimum 5 year contract, where it is under obligation to meet key performance targets, such as line speed, network capacity and customer satisfaction. The contract must also include clear rules for dealing with disruptions, including timely information for users. The infrastructure manager is also expected to work more closely in line with the needs of its users. That means adopting a business plan which includes investment and financial programmes and which aims at efficient use and development of the infrastructure. In view of rail's stiff competition with the other modes of transport ERFA also welcomes that the infrastructure manager must be given incentives to reduce the costs of providing infrastructure and the level of access charges.

No fiddling with the accounts

Not only do separate profit and loss accounts and balance sheets have to be kept and published for separate areas of activity between infrastructure management and the provision of rail transport services, and between rail freight services and passenger services, but these accounts must be kept in such a way that allows them to be monitored to ensure prohibition of transferring public funds paid to one area of activity and the use of income from infrastructure charges and surpluses from other activities.

Improved access to rail facilities

Dominant transport providers who also own rail facilities, be they marshalling yards or passenger stations, will find it more difficult to block competition on the rail market. Strict independence criteria ensure non-discriminatory access for all users. Facility operators are obliged to supply information on charges and technical access conditions in the network statement or on a website. Facilities must be managed in a way that they contribute to a competitive and growth-aspiring rail sector. This means ensuring optimal use of rail facilities and their services with a view to making available a wider range of commercial and operational facilities, and preventing any attempt to close the market

Imbalances in national implementation lead to unfair advantages on the market

In case a Member State (or indeed a regulatory body) is concerned that its national rail operators may face obstacles in running cross border services or from having access to the rail market in another country, the authorities may raise concerns over the implementation measures adopted by another Member State with the European Commission, who is able to take action to ensure compliance. Indeed the European Commission does not need to wait for such concerns to be raised, but can also act on its own initiative.

ERFA calls on the European Commission to monitor the implementation of all the measures in the Recast and take urgent action in the event of delay or breach.