The Review of the First Railway Package

Joint Position Paper of the

European Sea Ports Organisation (ESPO)

and the

European Federation of inland Ports (EFIP)

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Seaports and inland ports are faced with the same challenges and the same problems when it comes to railways and the policy governing it. Therefore, the European Sea Ports Organisation (ESPO) and the European Federation of Inland Ports (EFIP) have prepared a joint position paper on EU railway policy in general and the proposals for the recast of the First Railway Package in particular.

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The Single European Railway Area - no more time to lose!

For ports, there is a clear sense of urgency in achieving a single European railway network. A single European railway area without barriers seems to be the best way to guarantee an efficient use of the existing railway capacity. The remaining barriers, both legal, technical and political, should be lifted without further delay.

This is the main message that European seaports and inland ports want to send to European policy makers, now that the proposal to review the first railway package, the so-called "recast-proposal", is high on the political agenda of both the European Parliament and the Council. The European Sea Ports Organisation (ESPO) and the European Federation of Inland ports (EFIP) fully support the recast proposal of the Commission. They even want to go a step further.

The main challenges and concerns European seaports and inland ports are facing today regarding the functioning of the European railways are:

- Today, rail still has a national approach.
- The investments in rail freight infrastructure are not always demand driven.
- The incumbent undertaking often still enjoys a preferential treatment in receiving slot access to the network and good timetables at the dispatching centres of the infrastructure manager.
- The European railway system consists of a patchwork of different track pricing regimes. Track pricing is not always transparent and fair.
- There is a low level of reliability for non prescheduled rail freight trains (ad hoc slots).
- The "last rail miles" linking the rail terminal outside the port area with the port area are often characterised by old infrastructure and bad equipment.
- Spatial as well as local environmental effects (noise, vibrations…) are often difficult issues for local authorities and citizens.
- Rail has problems to meet the demand for short distance journeys (<100 km). The lack of flexibility when using rail freight services plays a role here.
- There is a lack of statistical information on rail cargo, their destinations and volumes.

Based on these concerns, ESPO and EFIP have developed the following recommendations:

- The current EU legislative framework on railways should be simplified.
- A real European approach will avoid diverging interpretations by Member States and limit the risk of having new barriers.
- The rail links to and from the port area should be optimised in view of guaranteeing a non discriminatory access for all railway undertakings to the port area. Improving these links should be seen as an important element of completion of the TEN-T network.

- Awaiting a full European interoperable railway system, a pragmatic regime of cross acceptance of operational rules at local level is needed to enhance the railway links between cross border ports in the short run.
- The corridor approach should not replace “national barriers” with “corridor barriers”. The corridor approach should be considered as a step towards a genuine European policy and railway network.

As regards the recast proposal of the European Commission, ESPO-EFIP ask for:

- The full unbundling of railway infrastructure and operations.
- A transparent role of the infrastructure manager.
- A railway strategy based on a genuine European approach.
- A non discriminatory access to rail related services in the port.
- A transparent charging system for using railway infrastructure.
- There should be no higher charges (“mark ups”) for international railway services than for domestic services.

1. The relation between ports, port authorities and railways

Before addressing the current EU railway policy and the EC proposals on the table, it is important to define from which angle ports should be looking at European railways and to determine why railway policy is important for both sea and inland ports and their authorities.

Looking at railway services and ports one should first make the distinction between port infrastructure and operations *in* the port area and port infrastructure and operations *outside* the port area.

Different models exist for the development, management and operation of the **railway system *inside* the port area**. Even if there seems to be a tendency for port authorities to become owner of the railway infrastructure in the port, there is no agreement on what model should be favored.

It is however clear that railway undertakings operating on the national and European railway network should have track access to the port area. The connection between the European rail network and the port should be open to all railway undertakings wanting to enter the port. Moreover, rail related services in the port, such as shunting infrastructure, fuelling and servicing, … should be open to all rail undertakings in a non discriminatory manner.

But Europe's railway policy concerns in the first place the **railway system *outside* the port area**.

Both for seaports and inland ports, the existence of adequate rail links between the port and the hinterland and the efficient use of this railway infrastructure, linking the port with the hinterland, are of paramount importance.

From a seaport point of view, efficient and sustainable hinterland connections are increasingly important. With transport volumes rising gradually in European seaports, it is clear that sustainable solutions have to be found to transport these freight flows to the hinterland. Moreover, often the development of additional capacity in a seaport will only get an approval if some strong engagements as regards sustainable hinterland flows are made. Indeed, as mentioned in a recent analysis ITMMA made for ESPO ([i]), the configuration (of barge and) railway networks proves to be a crucial organisational element for the future spatial hierarchy in the European port system.

But there is more. To face the growth rates in container handling, seaports are also increasingly looking beyond their own infrastructure and facilities and liaise with intermodal inland terminals in their hinterland. Inland ports and terminals allow for de/re-consolidation of cargo flows, and can help seaports to fully exploit potential economies of scale. Here again, performing railway links are, together with inland waterway links, a decisive factor.

From an inland port point of view, a well functioning and efficient railway infrastructure is fundamental. Inland ports are a lot more than entrance and exit gates on the waterway. Inland ports are important nodes in the inland transport network. Their success depends on their efficient water and railway transport links with the seaports and with the different economic centres. For inland ports situated along waterways, which do not have a guaranteed navigability all year round, railways are even more important.

At the same time, seaports and inland ports can be considered as very important "feeders" of rail freight trains and their lines in the European Union. Sea port related traffic, as part of the overall European traffic mix, constitutes a significant volume. WORLDNET estimated that some 603bn inland tonne kilometres are generated annually within the EU territory from seaborne freight, about a quarter of total freight. Looking at rail freight, 26% of rail freight traffic in the European Union is port related ([ii]).

2. Concerns about the current functioning of European railways

2.1. Rail still has a national approach

Today, rail still has a national approach. The cross border problems and lack of interoperability between the different railway systems are a major concern, clearly hampering the smooth functioning of the railway market and a fluid cargo flow by rail from the ports to the hinterland. A harmonisation of the rail gauges seems in that respect a priority. Other existing constraints in border crossing relate to differences in traction energy, train length, train controlling systems, rolling stock, operational rules, train crew certification, etc. But the need for cooperation goes beyond the development of Technical Specification for Interoperability (TSI). Infrastructure managers should also better cooperate in exchanging cross-border information.

Moreover, European railway corridors do not stop at EU borders. As a consequence, European railway policy should not only aim for an EU approach but also for a common approach that goes beyond these borders.

2.2. Investments in rail freight infrastructure are not always demand driven

The investments in rail infrastructure should be targeted and balanced. The incumbent railway undertaking (the former national railway company) remains often the most important interlocutor. Newcomers nor port authorities are sufficiently involved in the planning of investments in railway infrastructure.

In addition, it is important that the quality of infrastructure and tracks relate to the demands of the market and the function they have to fulfill, avoiding overinvestment and obliging users to pay for a quality that they do not need.

2.3. Preferential treatment of the incumbent railway undertaking can lead to market distortions

Often the incumbent undertaking still enjoys preferential treatment in receiving slot access to the network and good timetables at the dispatching centres of the infrastructure manager. In some cases, the incumbent undertaking has a special access to the information database of the infrastructure manager. This access provides him with valuable (sensitive) commercial information which gives him a competitive advantage over other parties who do not have this "inside" information. This preferential treatment is due to the fact that the incumbent rail undertaking often has staff (e.g. to manage the interface 'track/slot allocation, rolling stock-fleet and undertaking-staff) in this dispatching centre.

2.4. Lack of statistical information

There is a lack of statistical information on rail cargo, their destinations and volumes. The liberalisation of the rail freight market has implied that available information became fragmented, since cargo and wagons are in hands of different parties. This calls for a stronger role of the infrastructure manager to ensure data availability and exchange.

2.5. Track pricing is not always transparent and fair

The European railway system consists of a patchwork of different track pricing regimes. Furthermore the track price is not always related to the quality of the path or the service. The price of a train path should be related to its use (e.g. passenger or freight) and to the quality of the services offered and used.

2.6. A low level of reliability for non prescheduled rail freight trains

Reliability of rail freight transport proves to be a problem for ad hoc slots: these are freight trains that are not regular, not integrated in a dedicated time slot. This is especially the case for inland ports and terminals, which very often rely on many different infrastructure managers and experience more difficulties since they are further located in the chain.

2.7. Local environmental complaints in urban areas

Logistic and spatial planning problems can arise when linking ports and urban areas through railways. Using rail to link long distance transport with the last urban mile implies sufficient consolidation, distribution and logistics space in or near urban areas. Spatial as well as local environmental effects (noise,…) are often difficult issues for local authorities and citizens. Moreover, given the fact that rail freight has to share the infrastructure with passenger traffic, it is clear that rail freight often crosses urban areas in transit. Increasingly, this leads to local environmental problems (noise, vibrations,…). This is also due to the fact that housing is authorised very near to train tracks. The transport of dangerous goods can give rise to additional problems in that respect.

2.8. Problems to meet the demand for short distance journeys (<100 km)

The transport from and to the port is not always a long distance transport. The big challenge for rail freight is to attract the important market segment of the shorter freight journeys. Up to now, rail seems not ready to fulfill this function. The lack of flexibility when using rail freight services plays a role here. Often, train paths for rail shuttles have to be reserved one year in advance. Here inland waterway transport and road are far more flexible.

2.9. Limited infrastructure and access for the "last mile" by rail

The last rail miles linking the rail terminal outside the port area with the port area are often characterised by old infrastructure and bad equipment. Sometimes the tracks are not electrified, which means that the link with the port area can only be made with diesel locomotives. The limited infrastructure makes the rail operations on these last miles very complicated (burdensome security rules,…) and restricts indirectly the access to the port area. Often rail undertakings are not willing or not able to access ports and have to rely on the unique railway undertaking bridging the rail terminal with the port area ("opérateur ferroviaire de proximité"). The lack of competition in this part of the network has an effect on the price.

To conclude, port authorities are convinced that railways have to be taken out of their isolation. Rail performance can be improved by going outside the 'comfort zone': all parties (also private undertakings, shippers,…) should be involved and close cooperation between sea ports and inland ports should be encouraged. This cooperation should also be sought cross-border through a better exchange of information. Ports should not only look in their own backyard, but should oversee their entire supply chain and act proactively on both bottlenecks and opportunities.

3. ESPO-EFIP views on EU railway policy and the recast proposal

3.1. Introduction: the Single European Railway Area - no more time to lose!

For ports, there is a clear sense of urgency in achieving a single European railway network. A single European railway area without barriers seems to be the best way to guarantee an efficient use of the existing railway capacity. The remaining barriers, both legal, technical and political, should be lifted without further delay. Therefore, ESPO and EFIP fully subscribe to the aims of this recast.

In a co-modal transport chain, each transport mode has to follow pace. The strength of a transport chain is determined by the strength of its weakest part. ESPO and EFIP strongly believe that green logistics is not possible without a dynamic railway sector.

Bearing in mind the huge investments needed to develop railway infrastructure in Europe, ESPO and EFIP consider that existing railway infrastructure has to be used as efficient and

sustainable as possible. Each barrier implies an additional delay. New infrastructure should be developed as targeted as possible taking into account the needs of European transport users and market demands.

ESPO and EFIP underline the importance of optimising rail links to and from the port area in view of guaranteeing a non-discriminatory access for all railway undertakings to the port area. Improving and modernising the link between ports and railway networks should be seen as an important element to complete the TEN-T network.

ESPO and EFIP particularly favours the attempts to simplify the current EU legislative framework on railways. The recast should aim at a real European approach, avoiding diverging interpretations by Member States. As such, the risk of having new barriers to a fully European market will be limited.

European ports urge the European Commission to step up its efforts to monitor the implementation of the European regulatory framework. It is useless to have a European Railway Area on paper, if the majority of governments and stakeholders are not respecting the rules. Market failures and distortions should be addressed promptly.

Awaiting a full European interoperable railway system, European ports ask for pragmatic solutions in local cross-border zones. In that respect ESPO and EFIP plead for a pragmatic regime of cross acceptance of operational rules at local level, to enhance the railway links between cross-border ports in the short run. These short term solutions at local level should not jeopardise the overall aim of achieving a full interoperable railway system.

Finally, ESPO and EFIP point out that the corridor approach should not replace "national barriers" with "corridor barriers". The corridor approach should be considered as a step towards a genuine European policy and railway network. The corridors should learn from each other and exchange (best) practices, instead of competing with each other. The relation between the different corridor-oriented initiatives at EU level (ERTMS, rail freight, …) should be clarified and their implementation should be coordinated.

3.2. Full unbundling railway infrastructure and operations (Article 4 and 7)

ESPO and EFIP plead for a complete unbundling of railway infrastructure and operations. The infrastructure manager should be completely independent from rail operations. The separation of infrastructure management and railway operations that is currently foreseen "on paper" does not guarantee a full separation in reality. The current provisions still allow for situations where the infrastructure manager remains hostage of the rail operation branch of the incumbent railway undertaking. This could lead to infrastructure investment choices that are biased by the interests of the incumbent undertaking and could hamper an optimal organisation, use and management of rail infrastructure. Therefore ESPO and EFIP back the proposal for a full unbundling of infrastructure and operations. The unbundling should thus also be "legal": infrastructure managers and rail operations services cannot be housed under the same mother company or holding. Only a fully independent infrastructure manager can play its role properly.

3.3. The role of the infrastructure manager should be transparent (Article 7 and annex II)

ESPO and EFIP welcome the proposal to work towards a harmonised list of "essential functions" of infrastructure managers. This will enhance the transparency of their role and make it easier for applicants of train paths to deal with the different infrastructure managers.

Moreover, infrastructure managers should avoid taking decisions that are in conflict with Europe's Infrastructure Policy. It is clear though that the role of the infrastructure manager goes beyond the management of the TEN-T railway infrastructure. Infrastructure managers are also in charge of managing the regional and local network. It is important however that both levels of infrastructure management are reinforcing - and not contradicting - each other.

3.4. Need for a genuine European railway strategy (Article 8)

In view of achieving a single European railway network, ESPO and EFIP fully support the idea of a medium and long term infrastructure strategy to be developed by Member States, allowing the market and potential investors to make the necessary choices. However, when developing this strategy a clear distinction should be made between rail passengers and rail freight transport. Moreover, a the development of the strategy should follow a genuine European approach. ESPO and EFIP believe it should be stated more explicitly in the text of the proposal that this strategy should be based on the Union's infrastructure policy, avoiding as such that 27 national strategies are being developed. A clear reference to Europe's infrastructure policy seems relevant in that respect. It is then for Member States to elaborate it, taking into account specific national circumstances. Finally, it is important to involve port authorities, applicants and potential applicants of the railway infrastructure proactively in this exercise.

Finally, the five-year duration of the agreement between competent authorities of Member States and infrastructure managers (article 30, paragraph 2), which provides for State funding, should be seen as an absolute minimum, in order to guarantee continuity of investment.

3.5. Rail related services: the scope needs clarification (Article 10, 13 and Annex III)

ESPO and EFIP support the Commission proposals on rail related services. Rail related services in ports, such as shunting and marshalling yards, fuelling, maintenance, storage sidings, servicing, … should indeed be equally open to all rail undertakings. The "use-or-lose-it" principle, as put forward in the Commission proposal, can be an interesting instrument to guarantee an optimal use of rail related services. A conflict of interest may rise when one of these rail related services is in the hands or under control of the incumbent undertaking. This can affect newcomers who are disadvantaged through higher prices, less access or less service. It remains however to be seen what the modalities of such a principle should be.

ESPO and EFIP request however a clarification as regards the scope of the rail related services. Looking at freight terminals, a distinction should be made between “on dock terminals” (seaside or waterborne terminals) and “off dock terminals” (hub terminals). Whereas the access to on-dock rails should not be limited to one rail undertaking, ESPO and EFIP believe that dedicated rail tracks on the on-dock terminals, which are only used by the undertaking of the on-dock terminal, should be excluded from the scope of the provisions on rail related services. It seems logical that a privately owned railway infrastructure is only used for transporting freight that arrived by ship at this terminal. Neighbouring terminals should only have access to this terminal and its rail tracks if the on-dock terminal operator agrees. “Public” on-dock terminals which are used by different companies for loading and unloading ships should not be excluded from the provisions of this directive. The railway infrastructure on these terminals should be open for all users.

3.6. Charging of railway infrastructure must be transparent and fair

ESPO and EFIP plead for a transparent charging system for using railway infrastructure. The setting of charges for the use of infrastructure should guarantee a level playing field between different Member States, different ports, different applicants of railway infrastructure. European ports mainly operate on an international basis. An increased coordination between infrastructure managers when it comes to establishing charges for the use of infrastructure is therefore considered a priority.

In this respect, ports are responding positively to the initiative of the Commission to identify on the basis of objective criteria different market segments that allow for a different level of charges.

But looking at the different market segments identified in the recast proposal, European ports believe it is against every market logic to allow for a higher charge (“mark up”) for international services than for domestic services. In view of guaranteeing a level playing field between Member States, one should avoid that different charges for different market segments lead to market distortions. A higher charge for international services could have adverse effects in terms of achieving a Single European Railway Area by making domestic rail freight journeys cheaper. In an open European market, international rail freight journeys shouldn’t be more costly for infrastructure managers than domestic journeys. Besides, by making international journeys more expensive, one could indirectly make the call on domestic ports cheaper than the use of ports in neighbouring countries. On the other hand, ports of small Member States would be disadvantaged if crossing a national barrier can give rise to a higher charge. ESPO and EFIP therefore oppose the differentiation between domestic and international services for the setting of the charges.

European ports acknowledge that infrastructure managers of different Member States have to cooperate when introducing mark-ups that relate to rail services on more than one network (article 37). However, international and domestic charges should not be treated differently in a fully open EU rail market.

3.7. A balanced market monitoring

ESPO and EFIP back the Commission proposals regarding market monitoring. Market imbalances and distortions of competition should be detected as soon as possible. A strict monitoring system of the quality of rail transport *infrastructure* and of infrastructure charging seems appropriate in that respect. The question is whether Member States are able to assess prices and quality of railway *services* as foreseen in the recast proposal.

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