

Open letter to the attention of the transport advisors of the permanent representation of EU member states on the on new Luxembourg Presidency compromise

Brussels, 8 July 2015

Dear Madam, Sir,

CLECAT is concerned by developments of the governance proposal following sight of the Council Working document for the Land Transport Working Party on 9th July 2015.

The watering down of coordination committees, financial transparency and the functions and independence of the infrastructure manager will in our view, not provide the right conditions to attract much-needed competition to rail. We do believe that the success in achieving an increased share of rail freight with increased efficiencies and better services depends on fair competition and open access in the rail freight market through the development of sound business models and efficient internal management that must be achievable within the framework of a modern rail market legislation. It is impossible to achieve this without clearly separating the management of the network from the operation of services. Also for this, the RU and IM need to involve their customers through the coordination committees.

Cooperation agreements (Article 7c, paragraph 3)

The latest text proposes to allow for 'cooperation agreements' between an IM and an RU, even within vertically integrated structures. CLECAT is concerned that such a provision would simply allow vertically integrated structures, to continue monopolistic arrangements. Efficiencies and performance can be enhanced through cooperation but there is no need to provide this provision as it may be used to continue discriminatory practices. We are far from convinced that cooperation agreements within vertically integrated structures are the best way to solve efficiency and performance issues in rail transport. There are much better ways of enhancing efficiency and performance and that are compatible with a competitive rail market.

Coordination Committee (article 7f)

What we have noted on the other hand is that the text on the coordination committees has been diluted (article 7f). CLECAT is of the view that there is a clear need for all users and stakeholders involved in a supply chain with rail freight operations to work together. This coordination can't be limited to exclusively the infrastructure manager and the incumbent operator. Other users should be able to advise the IM's through these committees.

Therefore we call for the reintroduction of the reference to “coordination committees” and all the stakeholders who should be involved in such a dialogue with the infrastructure manager.

No weakening and fragmentation of the Infrastructure Manager

CLECAT opposes the new provisions included in the text that keep the infrastructure manager weak and fragmented. It is now possible for all the functions of the IM, even the essential functions, to be entrusted to different entities. Independent infrastructure managers should be able to efficiently manage the tracks on behalf of their users. We would therefore call on member states to reject the following new changes:

- The outsourcing of all the functions of the IM, even the essential functions, to different entities (Article 7c, paragraph 1, point a)
- The deletion of the responsibility for infrastructure managers to be in charge of traffic management and maintenance planning (Article 7b, paragraph 1)
- The outsourcing of specific development and maintenance works to railway undertakings (Article 7c, paragraph 1, point b)

Watering down of the transparency, and Chinese walls (Article 7d)

CLECAT regrets the weakening of many of the Chinese walls (Article 7a) put in place to safeguard the independence of the IM within vertically integrated structures.

The text weakens financial transparency as the IM is now allowed to outsource specific development and maintenance works to railway undertakings, and can now also grant loans to its subsidiary RU dealing with “infrastructure management and development” (Article 7d, point b). Cross-subsidisation in the use of public funds and other sources of revenue raised by the infrastructure manager endanger the level playing field and the competitiveness of the sector. According to article 7d these loans do not need to be approved by the regulatory body.

CLECAT would like to call on Member States to remain close to the original Commission proposal on transparency and Chinese walls. We are of the strong belief that as long as a financial stake exists between the infrastructure manager and the incumbent railway undertaking, the infrastructure manager will continue to have an interest in awarding privileged treatment to the incumbent railway undertakings to the detriment of the other rail users and the whole rail system.

We thank you for the attention to our views.

Yours sincerely,



Nicolette van der Jagt
Director-General