BUSINESSEUROPE

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Towards an ambitious agreement on the 4th Railway Package

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1. General comments

- The cost and efficiency of transport services and the quality of Europe's infrastructure networks directly affect trade flows, mobility and the competitiveness of European companies providing and using these services.

- In this context, BUSINESSEUROPE strives to remove technical, regulatory and administrative barriers in all modes of transport and improve the interoperability between national networks.

- In order to establish a Single European Railway Area as envisaged in the European Commission's 2011 White Paper on Transport, regulatory and technical barriers to entry, market failures and burdensome administrative procedures in the rail sector need to be addressed decisively.

- Rail is an essential element for increasing mobility in the next decades and at the moment the modal share of rail, despite previous Railway Packages, has remained relatively modest[1], partly due to obstacles to market entry hampering competition and innovation needed to improve and attract customers.

- **BUSINESSEUROPE generally supports the 4th Railway Package as it contains important proposals to improve quality, provide more choice and reduce costs of railway services in Europe**. Moreover, it can contribute to achieve a better functioning and more competitive single market.

- Europe must cut bureaucracy in authorisation procedures for rail technology. Efficient technical and administrative authorisation processes are a decisive factor for the further development of rail transport in Europe. To reach this goal it must be priority to finalise the technical pillar of the 4th Railway Package.

- We stress again that better implementation of former Railway Packages is fundamental to address many of the outstanding challenges, such as diverse national requirements and to ensure access of foreign rail freight providers to

[1] The modal share of rail freight has decreased from 11.5% in 2000 to 10.2% in 2012. Over the same period passenger rail in intra-EU transport has remained fairly constant at around 6% (European Commission).

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national networks, as well full implementation of the interoperability and safety Directives.

- Furthermore, ensuring maintenance, upgrade and development of infrastructures through the Connecting Europe Facility (CEF) or other European and national instruments – also in rail – is fundamental for Europe's competitiveness and ability to compete with other parts of the world. European interoperability should be guaranteed for any new investment, including where cost-benefit analysis is positive the elimination of the problem of different rail gauges between EU members, and should receive priority in the allocation of CEF.

- The proposal for a Regulation on European Fund for Strategic Investments (EFSI) might be an extraordinary opportunity for the deployment of large scale technological projects with European added value in the railway sector such as the European Rail Traffic Management System (ERTMS), in line with the competitiveness objective of the 4th Railway Package.

- Infrastructure investment is key, but not alone sufficient to realise the potential of passenger and freight transport via rail. This also requires structural changes to boost operational efficiency and service quality through more robust and transparent governance and market opening.

2. <u>The technical pillar</u>

- The technical pillar of the package is fundamental to remove remaining technical barriers related to interoperability, certification of rail vehicles and standards.

- An ambitious agreement on this part of the package will increase economies of scale for railway undertakings and rail suppliers and reduce administrative costs, introducing EU-wide standards. It will also help to avoid discrimination and speed up existing procedures.

- BUSINESSEUROPE therefore encourages the parties in the trilogue negotiations to keep these potential benefits in mind towards concluding final agreement on this part of the package. The removal of remaining technical barriers and improving interoperability is the necessary basis for more open and competitive railway markets in Europe.

- To improve interoperability, clear and transparent requirements are needed, harmonised as much as possible at European level and implemented similarly across the EU. Therefore, we fully support an enhanced role for the European Railway Agency (ERA), also giving new tasks in terms of safety certification and vehicle authorisation for cross-border operations. The measures would allow a 20% reduction in the time to market for new railway undertakings and a 20% reduction of the costs and duration for the authorisation of rolling stock. The Commission estimates a saving for companies of €500 million by 2025.

- As vehicles and railway undertakings solely involved in national transport would have the choice between submitting a request for authorisation or certification to

ERA or the national safety authority, it will be crucial to oversee the number of applications and try to ensure that the workload is divided appropriately, avoiding unacceptable backlogs.

3. <u>The market pillar</u>

- BUSINESSEUROPE fully supports the opening up of passenger services to new entrants from 2019, both in commercial services, such as high speed, and public service obligations. It should become possible for several railway undertakings to operate and compete on the same national lines. More competition will lead to lower prices for customers and lower costs for the rail industry, more efficiency, promote innovation and improve quality.

- When removing remaining barriers and further opening up to competition, it is fundamental to also ensure a level-playing field between Member States during the transitional period until the EU market is fully liberalised. This is necessary to avoid a distortion of competition between railway operators. It is also important to consider this vis-à-vis companies coming from outside Europe.

- In this context, **BUSINESSEUROPE calls on Members of the Transport Council to make further progress on the "market pillar" of the 4th Railway Package**, including on important elements such as governance, opening up to competition, the award of public services contracts and transitional periods.

- From 2022, most public service contracts should be awarded on the basis of a tendering procedure to enhance competition.[2] Exceptions should only be allowed in limited cases, where justifiable (e.g. short journeys, or remote areas), and only under strict efficiency requirements and performance criteria such as punctuality, frequency of services, customer satisfaction or quality of rolling stock. However, criteria must not be prone to foster administrative barriers and bureaucracy. In this respect, the question arises as to whether competences for the proposed provisions in fact apply on a European level or could be more efficiently handled at national level under the principle of subsidiarity. General exemption to Member States from competitive tendering of rail public service contracts, based on their size or share of the EU market, would create a patchwork of rail markets contrary to the idea of the single market. For instance, 12 Member States have an EU market share equal or of less than 1%. An exemption with an even larger market share would definitely limit contracts for tendering to a minority of EU countries. Further to this, these limits would also hamper competition on long distance traffic.

- Where Member States decide to choose the tendering method, a fair transitional period in line with the European Parliament's first reading should be agreed (*a transitional period of 10 years starting from 3 December 2022 in compliance with Article 5*). In addition, competition must be based on a level-playing field. Some European players still carry their historical financial burden and a largely civil-servant based staff-structure. Social clauses might be foreseen to help this process

[2] Directly awarded public service contracts constitute 42% of all EU passenger-kilometres in 2012 (European Commission).

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come true. Some operators therefore face up to 80% higher factor costs for running long distance trains and up to 30% higher costs in short distance relations compared to new entrants for reasons outside the railway undertaking's own scope. These factors cannot be neglected when advocating fair competition in Europe and need to be considered.

- Safeguards should be created to ensure the economic equilibrium and viability of public service contracts, i.e. for contracts which entail a public service obligation. In this context, it should be possible for Member States to bundle profitable and unprofitable lines for public service contracts. At the same time, open access services should not be hindered by public service contracts.

- As regards governance and the independence between railway operators and infrastructure managers, fair competitive conditions, not uniform company structures, need to be achieved. Conditions for holding models must respect the character of a holding structure. There should be a set of rules aimed at ensuring efficient performance and non-discrimination, whilst respecting the structures. At the same time, it is fundamental that infrastructure managers respond to the needs of the market.

<u>In particular</u>:

- The separation should apply to the essential functions necessary to ensure non-discrimination, fair train path allocation and infrastructure charging. Consequently, shared services within an integrated structure must still be possible to increase efficiency and reduce costs.

- To ensure an efficient functioning and to respect the characteristics of vertically integrated holding companies, the exertion of ownership rights according to corporate law principles must be allowed and supported. For example, members of the management board have to be able to hold mandates of the supervisory board of other railway undertakings at the same time. The independence of the infrastructure manager's decisions is in most countries protected by company law.

- A prohibition relating the transfer of senior staff between an infrastructure manager and a transport operator within the framework of an integrated undertaking is unsuitable in practical terms. The termination of professional opportunities on a company-wide and inter-sectorial basis would lead to a considerable loss of know-how and, as a consequence, a drop in safety and efficiency. Also, it must be clarified if this provision is in line with Art. 45 TFEU on the free movement of workers.

- The new rules on governance should not create disadvantages for companies organised on a private enterprise regime compared to companies with a public enterprise regime as well as the other way around.

- BUSINESSEUROPE believes that the regulatory advantages of separate structures should be balanced with the efficiency gains arising from integrated structures. Too stringent rules would have a profound impact on the management of vertically integrated railway undertakings, existing structures and control instruments and even put holding models as such at risk.

- As regards the regulatory framework for infrastructure management, safeguards should also be created for existing and future public-private partnership (PPP) solutions and possibility for certain sub-contracting arrangements.

- The 4th Railway Package must contribute to setting a regulatory framework that attracts private investment. Partially or full privatizations must be possible.

- While the 4th Railway Package must bring the necessary stability to railway operators, infrastructure managers and users, beyond this package, any further legislative proposals on rail markets and governance should be avoided in the coming years. The focus should be on achieving a fair intermodal level-playing field, enhancing capacity and putting in place high quality infrastructure by triggering (private) investment.

- It is also important to strengthen cooperation between regulatory bodies and expand the competencies of the European Railway Agency (ERA) to standardise interchangeable parts. Proper implementation and strong enforcement of agreed rules is essential. While the 4th Railway Package is being discussed, the transposition deadline of the previous package (mid-2015) has not even passed. Stability and regulatory certainty are essential to trigger investment.

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