

The Fourth Railway Package

Public hearing at the European Parliament:
Opening of domestic passenger markets and
a better governance of the railways

7 May 2013, Brussels

Mauro Moretti

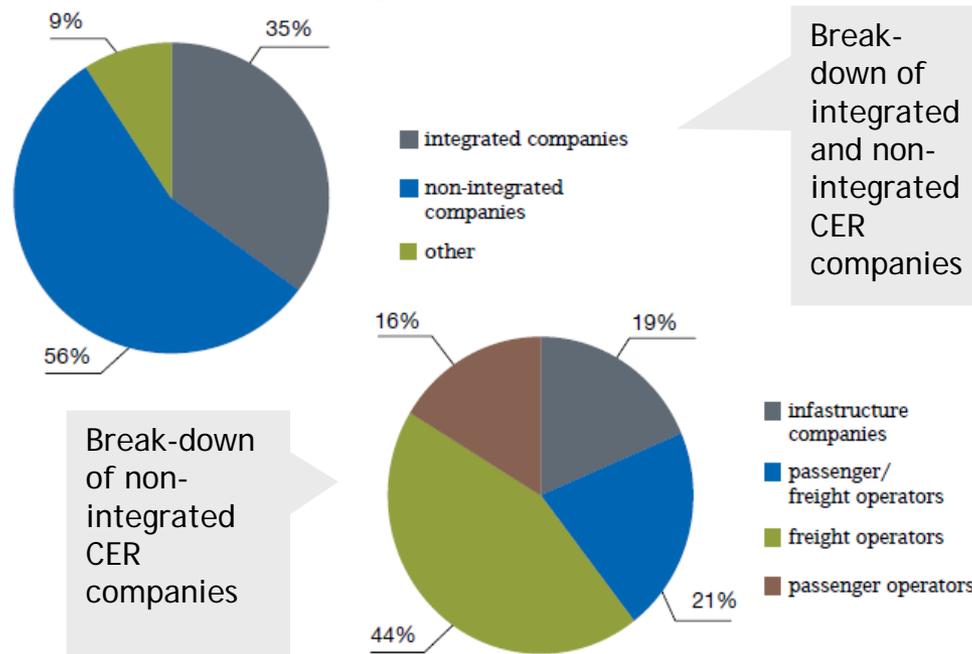
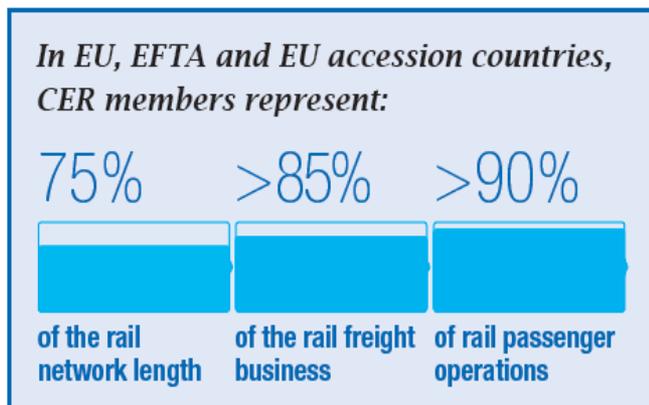
Chairman of the Community of European Railway and
Infrastructure Companies (CER)

CEO Ferrovie dello Stato Italiane



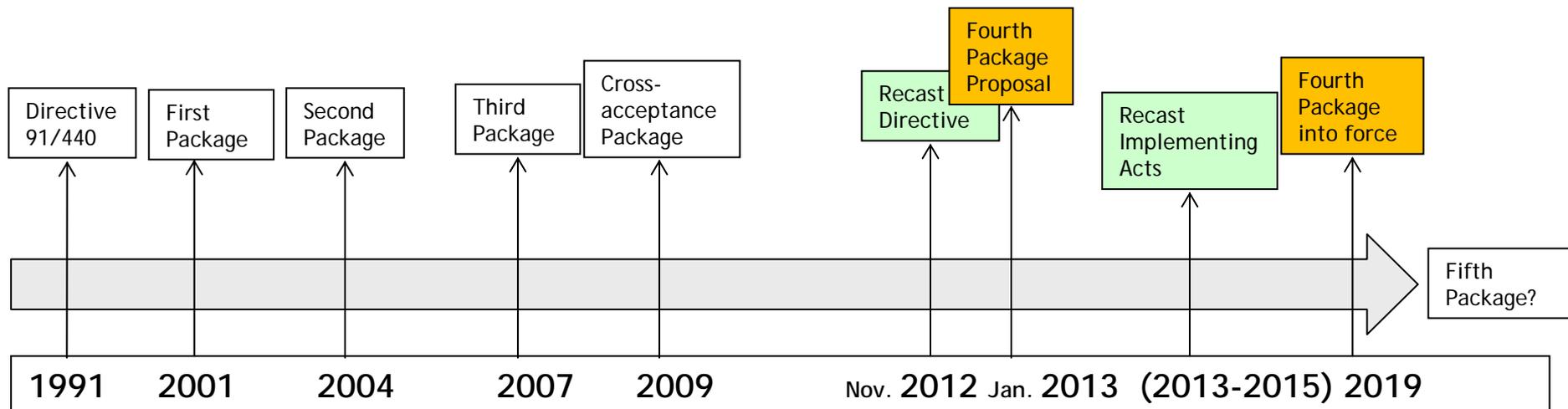
CER represents 80 member companies (23% privately owned), incumbents and new entrants, passenger and freight operators, integrated and separated infrastructure managers.

CER does not only represent the *incumbent and system operators' perspective* but the largest membership of rail industry actors throughout Europe including a large number of independent infrastructure managers.



The railway industry is constantly making efforts to adapt its business to the constantly changing EU legal framework. So far, the regulatory risk is very high and is hampering business development.

The Fourth Package should be the last step of a long process of restructuring and liberalisation but it must be solid enough, otherwise we will need a Fifth Package soon!

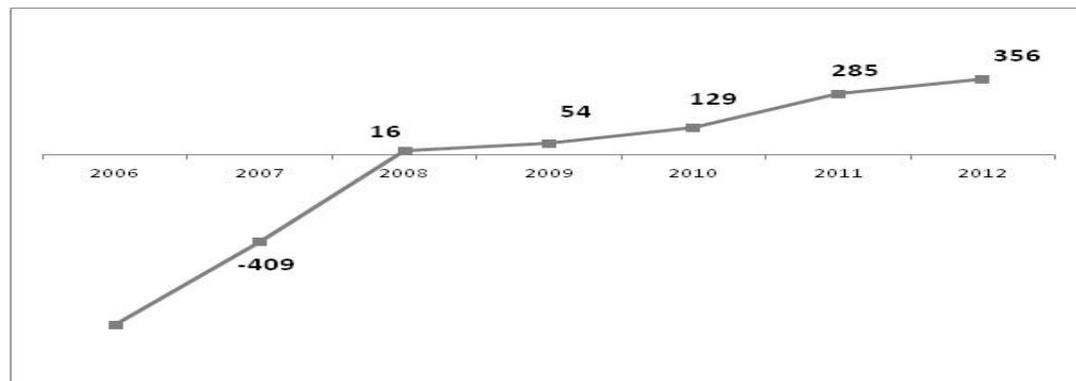


Among many positive outcomes of the EU rail reforms, some negative effects...



The Voice of European Railways

Incumbent rail companies in the last years have been deeply restructured. The chart shows FSI net profit (EUR millions):



But reforms went together also with negative developments

- Rail freight has been liberalised since 2007. Today **25% of the EU market is controlled by new entrants but modal share of rail fell from 18,5% in 2000 to 16,2% in 2010**. Market is more fragmented and more competitive but reduced because of the **lack of investments for rail infrastructure and unfair competition with road**.
- International rail passenger transport has been liberalised since 2010 but market scope remains small, cross-border services very limited. **Severe technical and operational barriers hamper the profitability of international trains** in direct competition.

The technical pillar of the Fourth Package: a vital role for a truly open market



The Voice of European Railways

- What matters is to **open the market**, **lift the barriers** that hamper competition, and attract investment with a **stable legal framework**.
- The biggest barrier is the time to market for vehicles due to technical regulations. Therefore **harmonised technical standard and ERA as the single issuing authority for safety certification and authorisation to place vehicles on market** is essential.
 - ➔ For this reason, **the technical pillar should be separated** from the rest of the Fourth Package for a fast approval by the co-legislators. The already opened markets of rail freight and international passenger transport need already today a lift of the technical barriers!

- ❑ Making the last step of the **long process towards a Single European Rail Market** thanks to domestic passenger markets opening
 - While ensuring non-discriminatory access to the rail infrastructure
 - While ensuring a fair and safe application of EU law to all market players
 - While bringing existing technical barriers down and fostering ERA
- ❑ The Fourth Package must bring the **necessary stability to rail legislation** - beyond this Package, any further legislative proposals on rail markets and governance should be avoided in the coming years while huge legislative efforts need to be done to:
 - Achieve a fair intermodal level playing field
 - Enhance capacity and infrastructure quality through more investments
 - Strengthen regulatory bodies' cooperation

The Commission's Impact Assessment on governance has been reviewed by independent academics. This is what Prof. Valletti wrote:

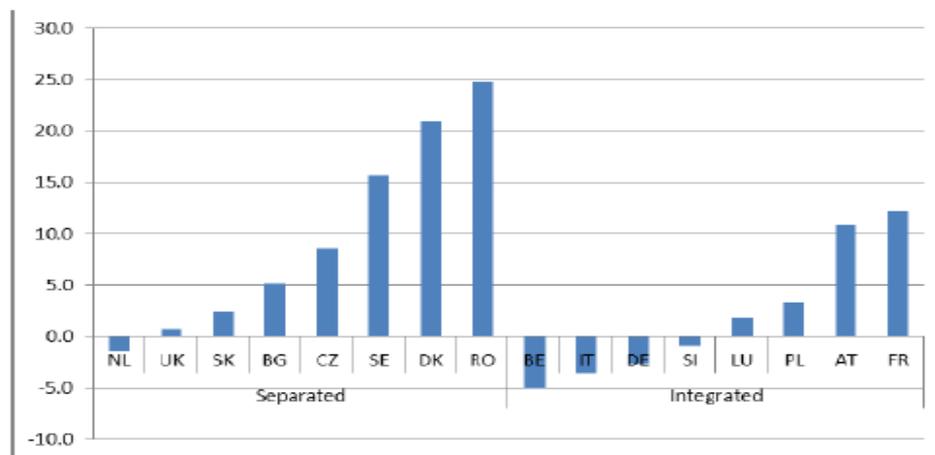
"In summary, I find the IA very weak for the following main reasons:

- The existing academic literature on the topic is largely ignored;*
- Available evidence is presented in a biased way;*
- The costs of vertical separation are not properly accounted for;*
- There is circular reasoning in the assessment of the impact of the scenarios considered;*
- Alternative, and reasonable, policy options (in particular, the strengthening of existing regulatory powers) are dismissed without explanation."*

CER has carried out its own analyses, both before the adoption of the Fourth Package and more recently. We invite you to consult those documents.

The Commission's Impact Assessment on Governance: Exposition of one serious distortion (among many)

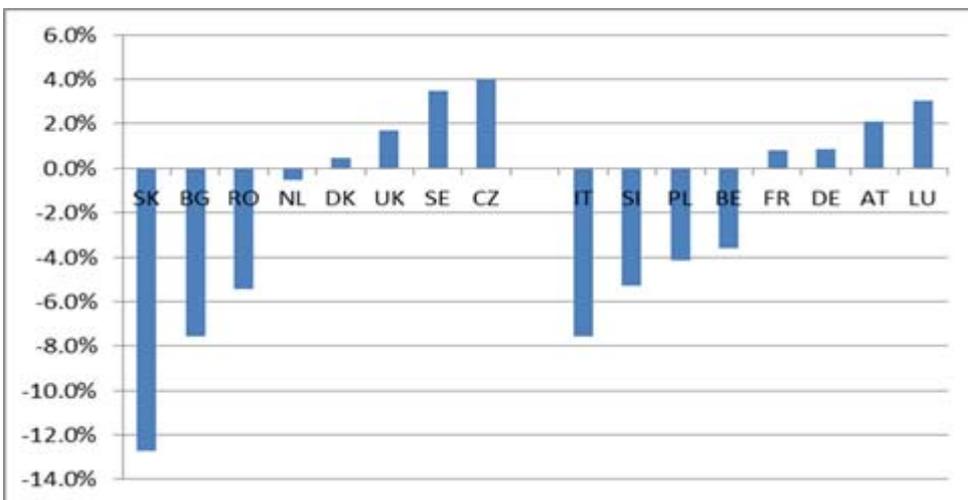
CHANGE OF USE OF INFRASTRUCTURE IN SELECTED COUNTRIES IN 2006-2009, %



Source: Rail Market Monitoring Scheme (RMMS) 2012 and Eurostat data.

The Impact Assessment argues on page 47 that intensity of use of infrastructure grew more in separated systems

The Impact Assessment's graph is based on passenger-train-kilometres per km of line - but why only passenger? The same networks are used for both passenger and freight - countries that have high growth in freight will artificially appear to be less efficient



Correct graph: total train-kilometres per kilometre of line, same data sources, same countries, same years: no such pattern

- How do you know if a policy would do good?
 - You need to review all the evidence, not just some of it
 - For example all countries, not just some; all recent years, not just some
 - **By being anecdotal, you can prove anything you want**
- A quote from the Impact Assessment, page 16: “*Evidence used to support the problem definition is mostly anecdotal*”
- Examples seen earlier: unjustified exclusion of several Member States
- Another example: Annex 3 listing cases of discrimination:
 - Some countries covered, not others (did nothing happen in the others?)
 - Some cases: allegations of competitors not addressed to regulators
 - Some cases: unrelated to having or not having vertical separation
 - Many cases: regulatory intervention worked or could be reinforced
 - Overall: **what evidence is given that vertical separation would be the most effective and cost-efficient solution?**

CER's PROPOSALS on governance and on opening of domestic passenger markets

- **Goal and trade-off** - Aim for the highest possible efficiency and ensure market access under non-discriminatory conditions so as to achieve the benefits of competitive pressure without causing losses in terms of system efficiency
- **Unbundling** - Reject the Commission's dogmatic and anti-business analysis of ever increasing separation (ref. Art. 7a, 7b, 7c of the Proposal amending Directive 2012/34 (Recast)) and provide an alternative approach, without risking total system costs overrun of 6 billions € up to potentially 15 billions € per year, based on:
 - **Significant new powers for the Regulatory Body** (as compared to the Recast) to ensure non-discriminatory access to infrastructure
 - **An important strengthening of the EU network of Regulatory Bodies** notably to foster cross-border services
 - **Greater system efficiency** by allowing **Member States to apply a governance structure based on the sound economic analysis**

Open Access

CER **supports the Commission's approach** for a universal adoption of open access rights across the EU

Art. 10, 11 of the Proposal amending Directive 2012/34 (Recast)

Some already successful examples: **WESTbahn** in Austria; **REGIOJET** and **LEO Express** in the Czech Republic; **HKX** in Germany; **NTV** in Italy (more passengers for both operators NTV and FSI despite the recession!)

- ✓ CER supports the Commission's proposed provisions safeguarding the economic equilibrium of PSO contracts
- ✓ CER also calls for new provisions protecting open access operators
- ✓ CER supports shortening the notice period for capacity requests, thus speeding up access to the market
- ✓ Market access on the basis of reciprocity, during the transition phase for EU undertakings, and permanently for undertakings from third countries

Public Service Obligations

CER opposes the Commission proposal: **free choice of geographical size and award mechanism** must be maintained

Keeping current Art. 5.6 of Reg. 1370/2007 unchanged

- ✓ For the sake of subsidiarity, competent authorities should freely decide the award mechanism (tendering or direct award) and the size of PSO contracts as it is now the case
- ✓ Adequate revenue and certain compensation must be guaranteed to operators
- ✓ In case of tenders, clauses on transfer of rolling stock and staff should not lead to burdening effects for RUs, workers and in the end for passengers

- After hard work CER is today presenting to the European Parliament its amendments to the Commission's proposal for a Fourth Package
- All CER members endorsed the amendments which are now available for MEPs in full transparency
- We believe that our version of the Fourth Railway Package is based on a solid economic basis and it is what the rail sector needs
- We call on MEPs' support for the CER alternative version of the Fourth Package!

MEPs can find here today:

- The list of [CER amendments](#)
- A summary of the [EVES-Rail Study](#)
- The academic [reviews of the Commission's Impact Assessment](#)
- A list of [53 questions](#) on the Commission's Impact Assessments

Thank you for your attention!



The Voice of European Railways

→ Mr Mauro Moretti

*Chairman of the Community of
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→ For further information,
visit our website: www.cer.be

