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To:

- *European Commission, DG MOVE, Head Unit B2, S. Prout*

Copy to:

- *European Commission, DG MOVE, Directorate, Jean-Eric Paquet*
- *European Commission, DG MOVE, Deputy Head Unit B2, P. Grillo*
- *European Railway Agency, Executive Director, M. Verslype*
- *European Railway Agency, Head Safety Unit, T. Breyne*
- *ANSF, Head of Department, Ing. Alberto Chiovelli*
- *Trenitalia, CEO Divisione Cargo, Dr. Mario Castaldo*

Brussels, 12th June 2012

Dear Mrs Prout,

We would like to thank you for your letter dated 23rd May 2012 in response to our letter of 19th April 2012 in which we addressed our concern on the recent restriction to self-certified ECMs by Trenitalia.

Notwithstanding the responsibilities and the freedom of RUs under the Safety Directive Art.4(3) and 9 to adopt specific rules and procedures on safety, the rational of this needs to be legitimate. . From this perspective, we can't fully share your views or accept your argumentation as outlined in your letter. We would therefore want to readdress the concern we have/: By introducing a massive reservation on self-declared ECM, and as such violating EU law and enforcing discriminatory rules, Trenitalia doesn't fulfill anymore the requirements laid done in Art. 10 (1) 49/2004/EC as evidence is made that its own safety management system doesn't meet the requirements of the relevant Community legislation. As a matter of fact, the Italian NSA should enforce the respect of EU law and make reservations on the safety certificate concerned.

As the European Union acceded the COTIF on 23rd June 2011 and as such joined the intergovernmental organisation (OTIF) managing that convention, we would like to remind further the content of Art. 17 COTIF – Appendix G (ATMF): “The competent authority referred to in Article 5, **another rail transport undertaking** or an infrastructure manager **may not reject or immobilize railway vehicles** if these Uniform Rules, the prescriptions contained in the Annexes to the APTU Uniform Rules, the special conditions of admission under Article 7 § 2 or § 3 as well as the construction and operation prescriptions contained in the Annex to RID, have been complied with.” Even though Italy did not yet ratify the COTIF, the scope of application of the COTIF in force is part of GCU and the rules apply to Trenitalia as signatory.

Following the letters from ANSF, dated 28th May 2012 and 5th June 2012 and attached as appendix, it has been brought to our knowledge that Trenitalia shared with the European Railway Agency some concerns on anomalies detected in the frame of train operations (see ANSF Letter 05.06.2012: “Recently the RU Trenitalia provided some data regarding anomalies on wagons carried in the period January 2011 – March 2012 where it appears that around 83% of these anomalies involve wagons with self-declared ECM.”). In this context, we also reiterate our concern to the European Commission to support the sector with any measure (with for example, the ERA intervention,) **and enforce the sharing of the findings** in an open manner allowing an efficient solution finding with all stakeholders.

In addition, despite the entry into force of legislation 445/2011/EC, we want to express our concerns on the consequences of the non-compliance of many Member States to the requirements and the deadlines set in the mentioned legislation. We have today 360 self-certified ECMs (and 27 MoU certified) which are waiting for a certification system to be effectively put in place in a national level in order to apply for certification and get a ECM certificate by no later than 31st May 2013.

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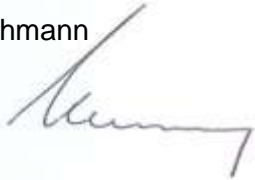
Due to the fact that many Member States have not yet notified to the European Commission the certification system (accreditation, recognition or NSA itself) they foreseen to apply and that today only 3 certification bodies have been officially notified to the Agency, the self-certified ECM which want to make application of the ECM regulation 445/2011/EC have no choice but to wait as very few entities are able to handle their request for certification. In this sense and taking into account the deadline of 31st May 2013, we want to avoid that the actual discussion on Trenitalia's restriction constitutes a precedent!

To underline the fact, that freight forwarders and shippers are worried about the economic impact and the consequences such a limitation would have to their existing railway traffics and that a short term solution must be found, we have to let you know that Clecat shares our position and is supporting our initiative.

Finally, as you announced in your letter to contact Trenitalia to address this issue with them, we would like to thank you in advance to keep us informed on the results of these exchanges. We remain prepared to discuss the issue further with you and thank you again for any additional consideration you may give to this issue.

UIP

Dr. Eckart Lehmann
President



UIP

Gilles Peterhanst
Technical coordinator



ERFA

Pierre Tonon
Secretary General



Appendix:

- (1) Letter ANSF 03749/12 dated 28.05.2012
- (2) Letter ANSF 04115/12 dated 05.06.2012