

IRG-Rail

Guidelines on Cooperation between National Regulatory Bodies

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Developing Common Positions on Implementation of International Freight Corridors

I. Introduction

- 1) The Independent Regulators' Group – Rail (IRG-Rail) was established in June 2011. Its purpose was to create an informal network of independent rail Regulatory Bodies to exchange best practice and to collaborate on the harmonisation of regulatory approaches. By mid 2012, the Regulatory Bodies of twenty European countries (Austria, Croatia, Denmark, Estonia, Finland, France, the former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Latvia, Luxembourg, the Netherlands, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland and Great Britain) were members of the IRG-Rail.
- 2) These IRG-Rail guidelines on cooperation between national Regulatory Bodies are designed to explain how members of IRG-Rail would expect to implement Regulation (EC) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (the Regulation). This Regulation sets out the legislative framework for the establishment of international market-oriented rail freight corridors. It is intended to increase international rail freight's attractiveness and efficiency, so that rail can increase its competitiveness and market share in the European transport market.
- 3) The guidelines complement the Regulation and recommend methods, criteria and procedures to be used by the Regulatory Bodies of the corridors established under the Regulation.
- 4) IRG-Rail notes that the provisions of these guidelines can be used by Regulatory Bodies to ensure consistent implementation, information and cooperation in cross border traffic, regardless of their participation in IRG-Rail. The guidelines should improve the transparency of regulatory processes and decisions for interested parties like infrastructure managers¹ and railway undertakings.

The purpose of this document is to set out the methods, as well as the criteria and procedures for cooperation between Regulatory Bodies

¹ Where appropriate in this document "infrastructure manager" also means "allocation body" as referred to in Article 14 (2) of Directive 2001/14/EC.

- in monitoring competition on freight corridors;
 - ensuring non-discriminatory access to corridors; and
 - in being the appeal body provided for under Article 30 paragraph 2 of Directive 2001/14/EC.
- 5) We recommend that these guidelines serve as a blueprint for cooperation and the exchange of information by Regulatory Bodies. Their adoption in several corridors will lead to common procedures in those corridors, as well as improved access to the Regulatory Bodies and conflict resolution. The guidelines will evolve over time and we shall update them as and when necessary to reflect developments.
- 6) Regulatory Bodies will consider every request on its own merits, building on precedents and taking into account previous decisions when appropriate. This document should not be interpreted as committing them to making a particular decision.
- 7) We shall publish the proposed methods and criteria on the IRG-Rail website and we would recommend that IRG-Rail members also publish them on their websites.
- 8) In some cases it may also be necessary to consider recommendations made in other IRG-Rail guidelines.
- 9) This process would also apply to the investigations carried out by Regulatory Bodies on their own initiative.

II. Principles of cooperation

For the purpose of these guidelines, a “responsible Regulatory Body” is the body which has been assigned responsibility for proceeding in a particular case. The “legally competent Regulatory Body” is the body which has the legal power to enforce the decision in that case.

Article 20 of the Regulation (reproduced in Annex 1), in conjunction with the Directive 2001/14/EC, provides the legal basis for Regulatory Bodies to monitor the definition of train paths to avoid discrimination.

a) Complaint relating to infrastructure managers:

As the territorial principle applies, national Regulatory Bodies regulate the activity of infrastructure managers in accordance with their national provisions (Article 20 of the Regulation).

b) Complaint relating to the one-stop shop (concerning in particular allocation decisions):

In accordance with Article 13.5 in conjunction with Article 20 of the Regulation, Regulatory Bodies are responsible for monitoring the activities of the one stop-shop and for ensuring non-discriminatory access to the corridor.

The regulation is not entirely clear and is open to different interpretations as to which Regulatory Body is responsible for deciding complaints. IRG-Rail’s preferred approach is described below.

Because of the multiple responsibilities for regulating the one-stop shop, and to guarantee fast decision-making, the members of IRG-Rail have developed the following criteria to identify the Regulatory Body responsible for taking a decision, in the event of a complaint regarding the one-stop-shop:

- 1) For complaints which relate only to matters in one country, the responsible Regulatory Body will be the competent Regulatory Body for that country.
- 2) For complaints which are not confined to a single country, the responsible Regulatory Body will be the one whose country contains the longest section of the contested pre-arranged train path.

We expect the rules in paragraphs 1) and 2) above to be inserted

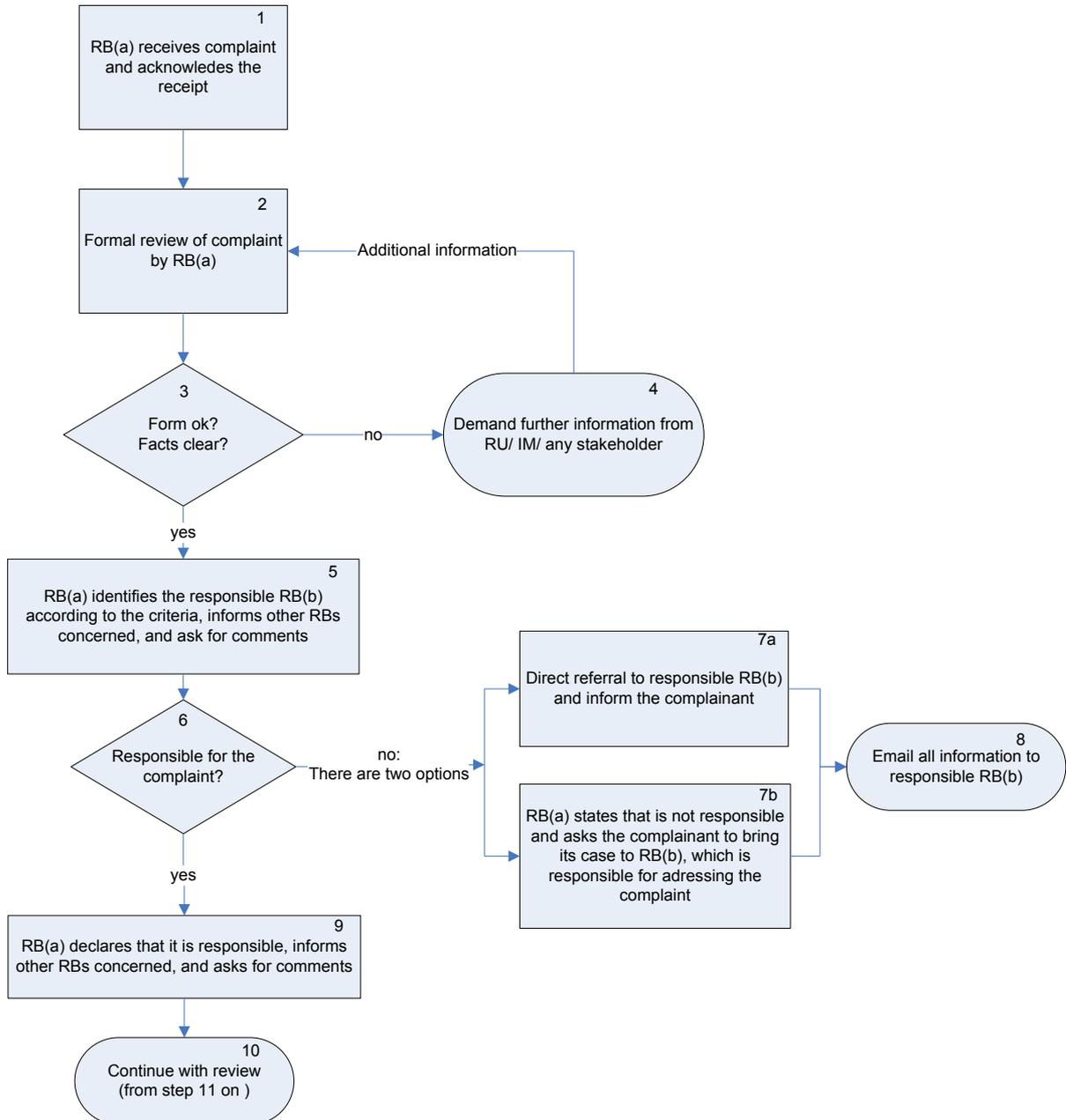
- as far as possible, in the corridor document (mentioned in Article 18 of the Regulation)
- and also, if the infrastructure manager agrees, in the national network statements of the countries concerned.

These criteria must be decided in advance and made available to all interested parties. Any subsequent complaint / appeal will be addressed according to the predetermined criteria on a case-by-case basis. The one-stop shop should comply with the decision of the responsible Regulatory Body.

Depending on the circumstances, it is possible that more than one Regulatory Body could be involved in a matter concerning the regulation of the corridor. As all Regulatory Bodies concerned by a complaint must be involved in the decision-making process, the process of co-operation is set out below.

Initial review of a complaint relating to the OSS:

The numbers of the boxes refer to the text below.



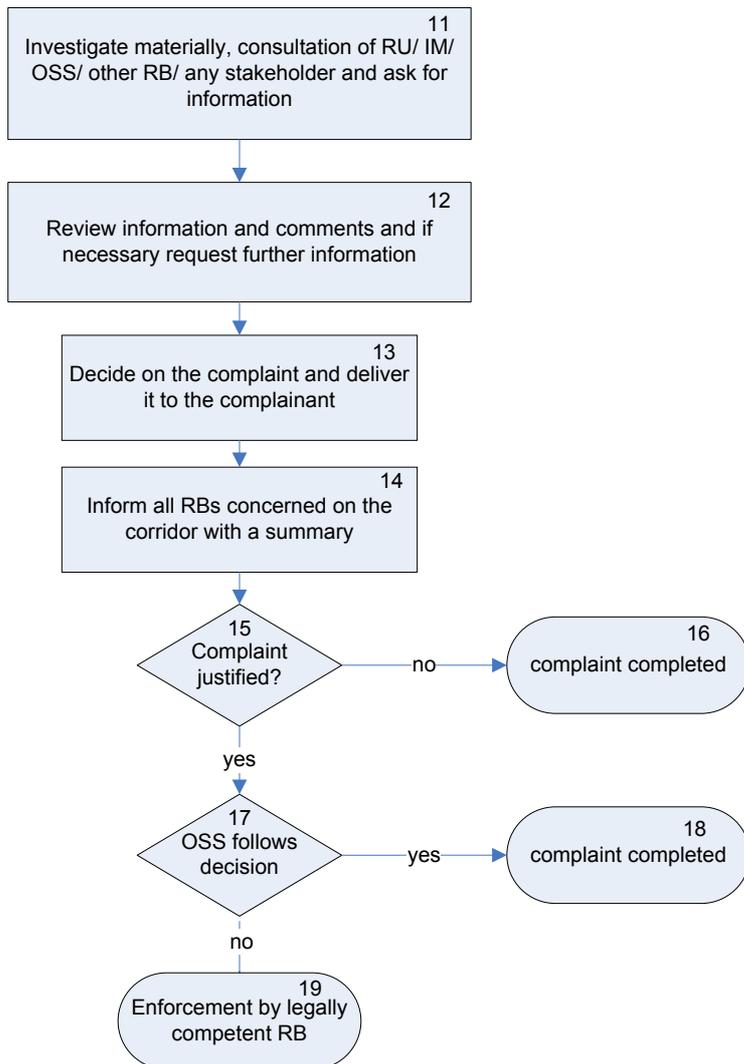
1) On receipt of a complaint relating to the OSS, the Regulatory Body acknowledges receipt.

2) It conducts a formal review of the complaint and checks if the information given by the complainant is complete and sufficient to initiate a case.

- 3) It decides if the complaint is complete and if the information is sufficient.
- 4) If there is information missing, the Regulatory Body requires the complainant to provide that information.
- 5) It then has to identify which Regulatory Body is responsible in conformity with the rules based on the criteria defined above.
To do so, the Regulatory Body
 - uses the rules
 - and checks in parallel with the Regulatory Bodies concerned that they share the same understanding of the rules applied to this particular case.
- 6) It then confirms which Regulatory Body is responsible for deciding the complaint
- 7) If Regulatory Body (A) is not responsible there are two options:
 - 7 (a) Regulatory Body (A) either refers the complaint to the responsible Regulatory Body (Regulatory Body B) and informs the complainant about the redirection. This assumes that either:
 - Regulatory Body (A) may refer a complaint according to the national procedural requirements or
 - Regulatory Body (B) may consider that the complaint can be received validly even on a referral basis; or
 - 7 (b) Regulatory Body (A) informs the complainant that it is not competent to handle the complaint on the basis of its own competency rules and advises the complainant to make the request to the responsible Regulatory Body.
- 8) The Regulatory Body which received the complaint sends all the relevant information to the responsible Regulatory Body.
- 9) The Regulatory Body responsible according to the criteria defined above declares its competency. It contacts all Regulatory Bodies concerned on the corridor via email; provides a brief summary in English of the disputed issues; and invites comments from other Regulatory Bodies.
- 10) The responsible Regulatory Body continues with the review.

Review:

The proceeding is based on the Regulatory Body's national law in the context of the regulation. The Regulatory Body which is responsible for the complaint sets the deadlines according to the national rules. The final decision is taken no more than two months after having received all information (in compliance with article 30 (5) 2001/14/EC).



11) The responsible Regulatory Body informs parties in writing who might be interested that it has received the complaint. Subsequently, it sends appropriate information (including a copy of the complaint or a brief summary) to any party which it determines is interested, and asks for comments on the complaint. Such parties might include

railway undertakings, infrastructure managers, the one-stop shop, other Regulatory Bodies or any other stakeholder. The Regulatory Body will have regard to the need for excluding confidential information and any matter that would or might, in its opinion, seriously and prejudicially affect the interest of the candidate operators, so far as this is practicable.

- 12) The Regulatory Body reviews all the information and comments received from the applicant and other parties and, if necessary, requests further information.
- 13) The Regulatory Body decides the complaint in its official language and delivers it to the interested parties, such as the applicant, the one-stop shop and where applicable the infrastructure manager.
- 14) It sends a summary of the decision in English to all Regulatory Bodies affected by the decision.
- 15) The decision establishes whether the complaint is justified or not.
- 16) If the complaint is not justified, no more action is necessary.
- 17) If the complaint is justified, the Regulatory Body must monitor whether the one-stop shop complies with the decision.
- 18) If the one-stop shop complies with the decision, no more action is necessary.
- 19) If the one-stop shop does not comply with the decision, it follows an enforcement procedure by the legally competent Regulatory Body.

The exchange of information between Regulatory Bodies can be in English. The formal decision is written in the official language of the Regulatory Body's country.

III. Organisational matters

The Regulatory Bodies intend to make the complaint process as easy as possible. To help ensure this, they will publish standard pages on each Regulatory Body's website containing uniform email addresses for each Regulatory Body.

Overview of Regulatory Bodies involved in the current rail freight corridors:

Corridor 1

Zeebrugge – Antwerp/Rotterdam – Duisburg – [Basel] – Milan – Genoa

NL, BE, DE, CH, IT

Corridor 2

Rotterdam – Antwerp – Luxembourg – Metz – Dijon – Lyon/[Basel]

NL, BE, LU, FR, CH

Corridor 3

Stockholm – Malmö – Copenhagen – Hamburg – Innsbruck – Verona – Palermo

SE, DK, DE, AT, IT

Corridor 4

Sines – Lisbon/Leixões – Sines – Elvas/Algeciras – Madrid – Medina del Campo / Bilbao / San Sebastian – Irun – Bordeaux – Paris / Le Havre / Metz

PT, ES, FR

Corridor 5

Gdynia – Katowice – Ostrava / Zilina – Bratislava / viella / Klagenfurt – Udine – Venice / Trieste / / Bologna / Ravenna / Graz – Maribor – Ljubljana – Koper / Trieste

PL, CZ, SK, AT, IT, SI

Corridor 6

Almería – Valencia / Madrid – Zaragoza / Barcelona – Marseille – Lyon – Turin – Milan – Verona – Padua / Venice – Trieste / Koper – Ljubljana – Budapest – Zahony

ES, FR, IT, SI, HU

Corridor 7

Prague – Vienna / Bratislava – Budapest – Bucharest – Constanta – Vindin – Sofia – Thessaloniki – Athens

Corridor 8

Bremerhaven / Rotterdam / Antwerp – Aachen / Berlin – Warsaw – Terespol (Poland – Belarus border) Kaunas

DE, NL, BE, PL, LT

Corridor 9

Prague – Horní Lidec – Zilina – Kosice – Cierna nad Tisou (Slovak / Ukrainian border)

CZ, SK

An annex containing the contact details for the Regulatory Bodies which are members of IRG-Rail is being prepared.

Annex 1

REGULATION (EU) No 913/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 September 2010 concerning a European rail network for competitive freight

Article 13

5. The activities of the one-stop shop shall be carried out in a transparent and non-discriminatory manner. To this end a register shall be kept which shall be made freely available to all interested parties. It shall contain the dates of the requests, names of the applicants, details of documentation supplied and of incidents which have occurred. These activities shall be subject to the control of the Regulatory Bodies in accordance with Article 20.

Article 20

Regulatory Bodies

1. The Regulatory Bodies referred to in Article 30 of Directive 2001/14/EC shall cooperate in monitoring the competition in the rail freight corridor. In particular, they shall ensure non-discriminatory access to the corridor and shall be the appeal bodies provided for under Article 30(2) of that Directive. They shall exchange the necessary information obtained from infrastructure managers and other relevant parties.

2. Member States, in order to foster free and fair competition on the freight corridors, shall endeavour to establish a comparable regulatory level. Regulatory Bodies shall be easily accessible to the market players, and shall be able to take decisions independently and efficiently.

3. In the event of a complaint to a Regulatory Body from an applicant regarding international rail freight services, or within the framework of an own-initiative investigation by a Regulatory Body, this Regulatory Body shall consult the Regulatory Bodies of all other Member States through which the international train path for freight train concerned runs and request all necessary information from them before taking its decision.

4. The Regulatory Bodies consulted under paragraph 3 shall provide all the information that they themselves have the right to request under their national legislation to the Regulatory Body concerned. This information may only be used for the purpose of the handling of the complaint or the investigation referred to in paragraph 3.

5. The Regulatory Body receiving the complaint or having initiated the own-initiative investigation shall transfer relevant information to the Regulatory Body responsible in order for that body to take measures regarding the parties concerned.

6. Any associated representatives of infrastructure managers as referred to in Article 15(1) of Directive 2001/14/EC shall ensure provision, without delay, of all the information necessary for the purpose of the handling of the complaint or the investigation referred to in paragraph 3 of this Article and requested by the Regulatory Body of the Member State in which the associated representative is located. This Regulatory Body shall be entitled to transfer such information regarding the international train path concerned to the Regulatory Bodies mentioned in paragraph 3 of this Article.