

Position Paper

Working group rail freight corridors

28/29 November 2011

Introduction

The European Commission published its Regulation (EC) 913/210 concerning a European rail network for competitive freight on 22 September 2010.

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.

The role of regulatory bodies in ensuring non-discriminatory access to these European freight corridors is essential. This position paper seeks to:

- A. evaluate the Regulation, identify regulatory issues and recommend areas of cooperation; and
- B. review the proposals of RailNet Europe in implementing the Regulation.
- C. organisational preparation

A. Evaluation of the Regulation (EC) 913/2010 concerning a European rail network for competitive freight

IRG-Rail, the group of independent rail regulators', welcomes the aim of the Regulation (EC) 913/2010 to create more efficient freight transport services offering smooth interconnections between national networks.

IRG-Rail members are prepared and have now competences to work closely together to ensure non-discriminatory access to the corridor. They have developed principles for cooperation to ensure quick decisions, especially in cases involving several regulatory bodies.

I.Cooperation of Regulatory Bodies

1. Cooperation of regulatory bodies, competency-related issues

a. Issue

National regulatory bodies monitor the activities of infrastructure managers in accordance with their national regulations (Article 20 of the Regulation). The territoriality principle applies. With regard to the one-stop shop, article 13 para. 5 of the Regulation states that its activities shall be subject to the control of the regulatory bodies in accordance with Article 20. In turn article 20 para. 1 of the Regulation refers to Article 30 para. 2 of Directive 2001/14/EC. Article 30 of Directive 2001/14/EC in conjunction with the other provisions in the Directive specifies that the respective national regulatory bodies monitor the activities of infrastructure managers.

b. IRG-Rail position

The regulatory bodies will work closely together to guarantee non-discriminatory access to the corridor. To ensure quick decisions, guidelines for cooperation will be developed.

Because of the multiple responsibilities for monitoring the one-stop shop, the members of IRG-Rail will develop criteria to identify the competent regulatory body, subject to provisions in national legislation.

All regulatory bodies concerned by a complaint must be involved in the decision-making process.

2. How to deal with confidential information when forwarding cases to other regulatory bodies

a. Issue

Article 20 para. 4 of the Regulation describes the process of consultation between regulatory bodies in case of complaints and own initiative (ex-officio) investigations.

b. IRG-Rail position

Members of IRG-Rail agree that Article 20 para. 4 allows regulatory bodies to provide business and company information, that they themselves have the right to request under their national legislation, to other European regulatory bodies if they need this information for regulatory processes.

II. Monitoring activities

1. Regulatory uncertainties in respect of train path construction by infrastructure managers

a. Issue

Under the Regulation, infrastructure managers will be responsible for specifying the speed, the train parameter data, as well as the route for the construction of train paths and international pre-arranged train paths for freight trains. There is major potential for discrimination to occur, particularly in the case of integrated companies whose sister companies are also market players and providers of infrastructure services. Wherein such cases there is a risk of infrastructure managers privileging the interests of their sister companies over the interests of other parties with right of access to the network, particularly when defining pre-arranged train paths.

b. IRG-Rail position

Article 20 of the Regulation in conjunction with the Directive 2001/14/EC provides the legal basis for regulatory bodies to monitor the definition of train paths to avoid a discrimination against parties seeking access to the network. To guarantee fast decision-making, IRG-Rail intends to develop guidelines for cooperation on the basis of the attached flow-chart (for further information see 3.b).

2. Monitoring the one-stop shop (allocation of train paths)

a. Issue

Under the Regulation, the one-stop shop is required to decide applications for pre-arranged train paths and for the reserve capacity that has been defined (Article 13 para. 3 of the Regulation) by infrastructure managers. The one-stop shop must allocate the capacity in line with rules regarding capacity allocation as set out in Directive 2001/14/EC. The one-stop-shop therefore decides applications for pre-arranged train paths or reserve capacity and allocates paths which have been identified by infrastructure managers. The refusal-decision is left to the infrastructure manager itself.

b. IRG-Rail position

To ensure non-discriminatory access to the corridor, regulatory bodies are responsible for monitoring the activities of the one-stop shop, especially in connection with the allocation of train paths. The legal basis for regulatory bodies' actions will be Article 13 para.5 in conjunction with Article 20 of the Regulation.

Depending on the circumstances, it is possible that several regulatory bodies could be involved in the regulation of the one-stop-shop. The regulatory control is not limited to the country in which the one-stop shop is domiciled but is also connected to the location of the infrastructure managers whose train path is affected by the allocation decision taken by the one-stop shop. Therefore the regulatory bodies will need to work closely together subject to the provisions in national legislation.

III. Responsibilities of infrastructure managers

1. Review of corridor network statements

a. Issue

The Regulation requires that the management board publishes a document including all the information contained in the network statement for national networks used by the corridor.

b. IRG-Rail position

The members of IRG-Rail agree that the Regulation does not mean that there is a need for specific "corridor network statements" to be developed transnationally. The document which the management board is obliged to publish under Article 18 of the Regulation is amongst other things a compilation of the relevant parts of network statements and service facilities statements of the national infrastructure managers. This does not affect their legal character. Regulatory bodies will therefore continue to monitor the network statements in accordance with national law.

2. Coordination of allocation of capacity between infrastructure managers and terminals

a. Issue

Under the Regulation, the management board should set up procedures for optimal coordination between infrastructure managers. This also covers access to terminals.

b. IRG-Rail position

The members of IRG-Rail agree that under the Regulation, it is difficult for authorised applicants to ensure that they secure a slot at a terminal matching a train path. It is therefore of major practical importance to have proper coordination between the infrastructure managers and terminal managers (for which the management board is responsible) in order to ensure that pre-arranged train paths match the required loading time at terminals. If there is no effective coordination regarding the allocation of infrastructure and terminal capacity, this is bound to cause access-related conflicts. We recommend that regulatory bodies continue to observe the development of coordination procedures between infrastructure managers and terminal managers for capacity allocation.

3. Traffic management

a. Issue

The Regulation states that the rules for traffic management in the event of disturbance should be described in the network statement of the corridors. These rules are outlined in the national network statements.

b. IRG-Rail position

The members of IRG-Rail agree, that uniform traffic management rules for the corridors would be desirable, but recognise that different rules for traffic management can be developed for national networks in accordance with national rules.

Regulatory bodies will make sure that these rules are implemented in a non-discriminatory way.

4. No absolute priority accorded to freight transport

a. Issue

The Regulation requires that international pre-arranged train paths are constructed recognising the need for capacity for other types of transport, including passenger traffic.

b. IRG-Rail position

The members of IRG-Rail agree that the Regulation does not specify that priority must be given to freight transport on the rail freight corridors. Rather, it clearly says that the need for capacity for other types of transport must also be recognised. Accordingly, the aim of the Regulation is only to create efficient freight transport corridors offering the possibility to run easily from one national network to another. In their decisions, regulatory bodies will ensure that the needs for capacity for other types of traffic are taken into account.

5. Pre-arrangement of international paths

a. Issue

Under Article 14 para. 3 of the Regulation, infrastructure managers of the freight corridor shall define international pre-arranged train paths for freight trains jointly.

b. IRG-Rail position

The members of IRG-Rail agree that it is solely international train paths for *freight* transport that need to be constructed pursuant to the provisions in Article 14 para. 3 of the Regulation. National train paths for freight transport along the rail freight corridors are not obligatory pre-arranged.

Regulatory bodies will monitor and ensure that pre-arranged train paths for freight corridors are published in the network statements.

6. How to deal with construction works in Country A that affect Country B ?

a. Issue

Article 12 of the Regulation states that the management board shall coordinate and ensure the publication of the schedule of all the works to be carried out on the infrastructure.

b. IRG-Rail position

The members of IRG-Rail agree that:

- the purpose of establishing international rail freight corridors is to facilitate and promote their use.
- with that aim, corridor managers should provide railway undertakings with information relating to engineering work likely to affect traffic as early as possible. This should include the provision of amended schedules including changed arrival times at terminals. Relevant information should be made available early enough to enable railway undertakings to make any necessary changes to their own resources in an efficient way.
- Contractual obligations relating to path allocation must be fulfilled, and infrastructure managers are responsible for coordinating changes to the timetable.

7. Establishment of freight corridors

a. Issue

The Annex to the Regulation lists corridors which must be established by 10 November 2013. As a result there seem to be two possible approaches to the creation of pre-arranged paths:

- Either constructing pre-arranged path within 11 months before November 2013
- Or constructing such paths after the date of establishment of the corridor.

b. IRG-Rail position

The members of IRG-Rail agree that pre-arranged train paths should be established as soon as possible and in any case at the latest by December 2014 (This applies to corridors 1, 2, 4, 6, 7, 9). The following operational measures will need to be taken much earlier to make the corridor operational:

- Creation of the Implementation Plan
- Setting up the OSS
- Undertaking the market study
- Publishing the "information on the conditions of use of the freight corridor"
- Developing harmonised processes and rules for handling capacity requests, capacity allocation and traffic management

B. RNE - Proposals

IRG-Rail welcomes and endorses RNE's cooperative approach and willingness to exchange ideas with the regulatory bodies of IRG-Rail concerning the role of RNE as service provider to corridor organisations.

We welcome to have a single transparent system and intend to follow the development of RNE systems for international traffic management and capacity allocation for international rail freight. _

C. Organisational preparation

a. Issue

Article 20 of the Regulation describes the tasks of regulatory bodies in relation to complaints from applicants regarding international rail freight services, and requires regulatory bodies to cooperate. The first corridors will be operational by November 2013. By this time the responsible regulatory bodies have to be ready to receive complaints. For some tasks such as reviewing parts of the "Information on the conditions of use of the freight corridor" document, monitoring the establishment of the pre-arranged paths and carrying out the market study, regulatory bodies will have to put in place the necessary arrangements earlier.

Each regulatory body should plan its organisational activities and establish them by the beginning of January 2013 to ensure that the tasks required by the Regulation can be carried out from then on. Infrastructure managers and applicants will have to be informed about the new structure of the regulatory bodies in order to make it transparent.

b. IRG-Rail position

- Responsibilities

Regulatory bodies will identify the necessary resources within their organisation to carry out the following tasks as envisaged by the Regulation:

- Monitoring the establishment of the pre-arranged train paths
- Monitoring the development of the market study

- Monitoring the creation of the OSS including the register
- Management of complaints
- Cooperating with regulatory bodies of each corridor
- Reviewing the document on „Information on the conditions of use of the freight corridor“
- Monitoring of the quality management

Regulatory bodies make sure, that they have taken all organisational measures necessary by 1 January 2013.

The relevant regulatory bodies will report on progress and activities continuously in the working group.

- Guidelines

The IRG-Rail working group rail freight corridor will develop guidelines on regulatory bodies monitoring tasks under the Regulation by November 2012. These guidelines will be presented for adoption to the IRG-Rail plenary. The guidelines will include in particular process diagrams, rules of competence for decisions against the OSS, deadlines and recommendations on how to deal with special regulatory topics.

- Other organisational measures

The regulatory bodies will adopt uniform e-mail-addresses for information to be exchanged by the applicants. A proposal will be made by the IRG-Rail working group of the rail freight corridors by 1 March 2012 and submitted to the IRG-Rail regulatory bodies.

The regulatory bodies will publish information concerning corridor topics, responsible contact partners, their contact details, and their field of activities on a special prepared homepage. This will be part of each homepage of the regulatory bodies. For this future design of the homepages the working group of the rail freight corridors will make a proposal to the IRG-Rail plenary by June 2012.

The regulatory bodies will use similar forms in English when cooperating in managing complaints.