

Independent Regulators' Group – Rail

IRG–Rail

**Initial thoughts on the proposed revision of the Freight Corridor
Regulation**

11-12 November 2015

IRG-Rail is the network of independent rail regulatory bodies from 26 European countries. The overall aim of IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railways market in Europe. IRG-Rail acts as a platform for cooperation, sharing of best practice on regulatory issues and promotion of a consistent application of the European regulatory framework.

This IRG-Rail paper is published on the responsibility of the IRG-Rail plenary. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the governments of its Member States.

I. Introduction

1. Regulation (EU) No 913/2010 (the Regulation) aims at improving the efficiency of rail freight transport relative to other modes of transport by establishing a European rail network for competitive freight made up of freight corridors.¹
2. The European Commission (the Commission) intends to work on a revision of the Regulation starting in 2016. IRG-Rail has decided to develop thoughts ahead of this proposed revision of the Regulation in order to offer some support to the Commission's work.
3. Many regulatory bodies have been involved in the monitoring of rail freight corridors for only a few years and on a limited number of corridors. IRG-Rail has noted that corridors are not functioning well and the needs of the market are not being met. IRG-Rail considers that more extensive information and experience is necessary, including the views of the market.
4. Experience that has been acquired so far on corridors established in accordance with the Regulation is in many respects too limited to provide a basis for substantiated opinions on how the Regulation should be amended. Notably, several of the designated corridors are not yet operative, and other corridors have only been in operation for a few years. IRG-Rail believes that a full revision of the Regulation at the present time would therefore be based on the selective experiences of a few corridors only.
5. IRG-Rail proposes to limit the revision of the Regulation for the time being to making necessary legal and technical adjustments and wait until further experience has been acquired on all operative corridors, before making further (material) amendments. More experience and further assessment of the actual state of play are needed to be able to evaluate whether the system is functioning and whether the needs of the market are being met.
6. Moreover, corridors cannot be viewed individually and in isolation. Each corridor constitutes a part of a more extensive rail network, comprising other corridors as well as rail infrastructure not forming part of the designated corridors. In IRG-Rail's opinion, it is important to seek to eliminate any obstacles and impediments to coordination and integration beyond the individual corridor itself, and, as such, the Regulation should take into account a network perspective.
7. The purpose of this paper is to identify which requirements have worked well so far and where problems have been observed. Our initial analysis is included under section III of this paper. These are initial thoughts and will be followed by a position paper in 2016 to help informing the European Commission's impact assessment and revised regulation 913/2010/EC.

¹ See recital (30) of the Regulation.

II. General remarks

8. IRG-Rail acknowledges a number of positive developments within the framework of the Regulation, such as the establishment of a Corridor One Stop Shop (C-OSS) as a single point of contact for all users of the freight corridor, a clear framework for governance of the executive and the management boards, an improved cooperation between infrastructure managers and railways operators and a common approach to information provision.
9. Some other developments have been less constructive: For instance the involvement of the advisory groups of representatives from terminals that are adjacent to the corridors is disappointing. The actual take-up in usage of Pre-Arranged-Paths (PaPs) is rather limited. PAPs do not seem to meet the requirements of rail freight stakeholders who currently tend to approach each infrastructure manager directly with path requests.
10. Based on the market's experience of capacity allocation in active corridors, there seems to be a need to assess how the integration of terminals in the allocation process should be arranged. Currently, the allocation of capacity in active rail freight corridors is concentrated on the allocation of infrastructure capacity (train paths). Allocation of capacity in relevant terminals is part of the individual terminal operator's processes in each member state. IRG-Rail believes that there is a need for further consideration of terminals in the corridor allocation process, and that the scope of the Regulation should be clarified in this respect. The aim is to improve the future integration of terminals in the corridor.
11. The roles and in particular the monitoring powers of the regulatory bodies need to be clear as regulatory bodies are legally required to monitor competition in rail freight corridors. Clarity is required in terms of the scope of monitoring powers, e.g. circumstances when the regulatory bodies are empowered to take action.

III. Initial analysis of the Regulation

A. Terminology and transparency

12. The Regulation serves as the legal basis for the operation of rail freight corridors. Its scope depends on the definition of rail freight corridors. All parties concerned with rail freight corridors (e. g. infrastructure managers, management boards, terminal operators, applicants, regulatory bodies) rely on clarity in this respect.
13. IRG-Rail considers that the term "freight corridor" in the Regulation is unclear and is not always applied in a consistent manner, especially in relation to expressions such as "corridor", "principal routes", "along the freight corridor", "sections connecting them" and "diversionary routes". For the purpose of clarification we suggest a provision requiring infrastructure managers to have a clear description of rail freight corridors in the Corridor Information Document (CID), for instance by including a map and diversionary routes where necessary.

14. IRG-Rail suggests deleting the term “specially arranged” in the terminal definition in Article 2 (2) (c) Regulation. It should be clear that the purpose for which terminals have been originally established is not the main point. The decisive factor is whether a terminal is able to perform the described function today. If so, it should be defined as a terminal in the context of the Regulation, regardless of its original purpose. For example terminals in ports or along inland waterways may not have rail freight as their main purpose, but may nevertheless have a clear relevance to rail freight (e.g. multimodal infrastructure) and therefore should be part of the Regulation’s scope.
15. As a general remark the Regulation and Directive 2012/34/EU (the Directive) should be consistent. For example, consistency is required with regard to the term “applicants”. As this term is clarified and defined in Article 3 (19) of the Directive, IRG-Rail considers that a separate provision on “authorised applicants” is not needed in the Regulation. The term “railway undertaking” should be replaced by the term "applicants" throughout the Regulation.
16. However, regarding the definitions of “infrastructure manager” and the "railway infrastructure to be established, managed and maintained by them", consistency between the Regulation and the Directive seems to be counterproductive to the functioning of the rail freight corridors due to the inadequate Directive definition – to which reference is made in the Regulation. According to the Directive some items of the “railway infrastructure” are part of “service facilities” (e.g. “passenger and goods platforms, including in passenger stations and freight terminals”). Thus, an operator of a service facility could at the same time be considered an “infrastructure manager”. As a result, this could mean that terminal operators would have to apply all relevant rules pertaining to an infrastructure manager, for instance be part of the corridor management board. Due to the large and changing number of terminals involved in a rail freight corridor, the number of participants in the management board would become far too big and impact on the efficient functioning of the management board. IRG-Rail therefore suggests excluding the terminal operators from the scope of the definition of an “infrastructure manager” for the purpose of the Regulation. Nevertheless, the involvement of terminal operators is important for the development of the rail freight corridors and should be secured via the advisory groups.
17. As transparency is of utmost importance for all parties concerned with rail freight corridors, IRG-Rail is of the opinion that the implementation plan developed by the management board should cover all aspects concerning the description of rail freight corridors (including diversionary routes and terminals where possible) as described in previous paragraphs of this paper.

B. Designation and Governance

18. IRG-Rail believes that the governance structure established by the Regulation is positive as it contributes to allocating responsibilities, encourages cooperation between different stakeholders and offers the various interested parties an opportunity to influence the development of and conditions relevant to freight corridors.
19. IRG-Rail considers that the advisory groups are particularly important in the corridor system and welcomes their establishment.

20. All applicants and not only railway undertakings should be afforded a similar opportunity to express their opinions to the management board for instance by including them in the advisory group as referred to in Article 8 (8) of the Regulation.
21. Furthermore, IRG-Rail recommends strengthening the position of both the railway advisory group (RAG) and the terminal advisory group (TAG) and making sure that the opinions of the advisory groups are appropriately taken into account in the decisions of the management board which have consequences for services, investment and management of infrastructure.
22. Currently, the RAG and TAG are entitled (“may”) to “issue an opinion” on any proposal of the management board. This is however a non-binding contribution that may have limited influence on the management board. IRG-Rail recommends strengthening the position of both advisory groups, ensuring that their opinions are sufficiently taken into account in the decisions of the management board when the decisions have an impact on the access to and provision of services, investment and management of terminals. Consultation of applicants and terminal operators – at least for those decisions that have an impact on their respective businesses – should become a mandatory part of the process. The management board should not take a decision contradicting the formal opinion of the relevant advisory group without proper justification. This would enable the advisory groups to complain to the executive board if they were not involved or their opinion was not considered appropriately. This may encourage applicants and terminal operators to take greater responsibility for issues relating to their activities and to contribute with their knowledge and experience relevant to freight corridors. Consequently, the acceptance and influence of the advisory groups in the market would be recognised and grow.

C. Coordination of works

23. IRG-Rail notes that to date management boards do not appear to have undertaken any coordination of maintenance works on lines in corridors, neither within a corridor nor between corridors. Coordination of works among all infrastructure managers concerned is essential in order to ensure that the necessary capacity identified in the transport market study is made available. Furthermore the management boards must involve applicants at an early stage and publish plans well in advance in order to meet the needs of the market. To a larger extent terminal operators should be afforded the possibility of influencing the coordination and publication of works. This could be done with an adequate IT system. IRG-Rail therefore suggests a provision stating they should be informed and consulted at an early stage of the works coordination process.

D. Corridor One Stop Shop

24. Since the entry into force of the Regulation each rail freight corridor has established a C-OSS. Initial experience shows that the creation of C-OSSs makes the application process more convenient for applicants.

25. IRG-Rail considers that the legal structure of the C-OSS needs to be clarified, notably with regard to the competences of the different bodies (C-OSS, management board, European Economic Interest Grouping (EEIG)). This should include a clear definition of the different bodies' powers, duties and legal and regulatory obligations.
26. In future, the allocation of train paths and the connection with the terminals need to be harmonised and coordinated. Currently, the capacity for train paths is allocated most of the time much earlier than the capacity in service facilities. This may create difficulties in the planning of terminal capacity in the long term, as railway undertakings do not yet know their precise terminal destinations and times of arrival until shortly before the service is needed.
27. Better coordination between requests for PaPs and capacity in terminals is needed. This would insure a better use of capacity on corridors. The role of the C-OSS should be considered in this respect.

E. Framework for the allocation of infrastructure capacity

28. IRG-Rail welcomes the involvement of regulatory bodies in the developments of framework for the allocation of infrastructure capacity on the freight corridor (FCA).
29. The FCA includes detailed provisions and rules to be followed by the C-OSS when allocating corridor infrastructure capacity. The legal status of the FCA has been the subject of numerous discussions as it is not clearly stated in the Regulation. Due to the importance of the rules in order to ensure non-discriminatory access to the rail freight corridors, the legal nature of the FCA should be clarified. In IRG-Rail's opinion, it should be legally binding. Furthermore it would be useful to provide some indications regarding the content of the FCA in the Regulation. IRG-Rail also believes that the advisory groups would need to be consulted prior to the publication of the FCA.

F. Traffic management

30. IRG-Rail notes that common targets for punctuality and guidelines for traffic management under Articles 16 and 17 of the Regulation do not appear to have been implemented yet at the corridor level.

G. Corridor Information Document

31. IRG-Rail welcomes the structure of the CID. IRG-Rail notes that some parts of the CID consist of information that is also included in the national network statements. It is important for applicants interested in using the corridor that network statements and CID do not contradict each other.
32. For those parts of the CID originating from the national network statements, the regulatory bodies concerned can base their regulatory action on their national

competencies. For those requirements which are currently not part of the network statements (e.g. CID book 4²), it is unclear whether regulatory bodies have the necessary competencies to monitor the content and take the necessary actions in order to ensure compliance.

33. IRG-Rail recommends harmonising information requirements for all the CIDs, especially with regard to terminals. At the moment the level of information varies significantly and is not consistent.
34. In order to achieve standardised information for all CIDs about terminals and services that are offered in terminals, the information concerning the conditions and methods of accessing the terminals needs to be clarified, for instance the location of the terminal, its plan, its services, the opening hours, the accessibility and link to service facility statements, where available.

H. Regulatory bodies

35. As outlined above, the regulatory structure outlined in the Regulation has positive effects. It makes it easier for the regulatory bodies to get the necessary information to carry out their regulatory activities. But IRG-Rail wishes to introduce a stronger role of regulatory bodies in order to support the monitoring and supervisory tasks required under Article 20 of the Regulation.
36. IRG-Rail considers that adequate regulatory control is a key issue for the success of rail freight corridors. As such, the description of the authority of the regulatory bodies in the context of rail freight corridors should be consistent with the provisions detailed the regulatory body's functions in the Directive. Clear rules should describe the competences of regulatory bodies to ensure proper monitoring for non-discriminatory access to corridors.

VI. Conclusion

37. IRG-Rail intends to carry out further investigation into the status of rail freight corridors in order to collect facts and views of market players and contribute to the development of the Regulation. It also intends to publish a position paper providing input in the European Commission's impact assessment and aiming at clarifying the role of the regulatory bodies within the revised Regulation 913/2010/EC.

² RailNet Europe developed guidelines for the structure of the CID. The proposed structure consists of five books; CID book 4 concerns "Procedures for Capacity and Traffic Management". The recent version of the guidelines can be found in the internet: <http://www.rne.eu> > Corridors > Rail Freight Corridors (RFCs) > Corridor Information Document