

European Rail
Infrastructure Managers



Regulation concerning a European Rail Network for Competitive Freight

Joint Position Paper

February 2009

Executive summary

On 11 December 2008, the European Commission proposed a regulation concerning a European rail network for competitive freight. This initiative is aimed at improving the quality of international rail freight transport in Europe. The Commission proposes the creation of trans-European corridors on which priority, both in path allocation and traffic management, would be granted to certain types of freight traffic.

The European Rail Infrastructure Managers (EIM) and the Association of European Rail Industry (UNIFE) support the following aspects of the Commission's proposal:

- Market-oriented definition and management of corridors;
- Important role given to infrastructure and terminal managers;
- Development of implementation plans, performance indicators and performance schemes;
- Introduction of the authorised applicant principle on the freight corridors

However, EIM and UNIFE have some concerns regarding the lack of flexibility in the:

- Definition of corridors;
- Definition of rigid priority rules (for capacity reserves and traffic management);
- Mandatory use of One Stop Shops.

EIM and UNIFE also believe that the Commission has missed an opportunity to exploit the full potential of:

- Regulatory bodies;
- Existing RailNetEurope and ERTMS corridors.

1. Introduction

UNIFE and EIM welcome the Commission's initiative to boost rail freight and to facilitate international rail freight transport in Europe. Rail freight is uniquely placed to offer a solution to the dilemma of growing demand for transport and the need to reduce CO2 emissions.

The measures proposed have the potential to alleviate some of the obstacles encountered by international rail freight. They complement existing European railway legislation, such as the first and second railway packages, as well as the ERTMS deployment plan currently being debated by the European institutions.

The proposal aims to create trans-European corridors on which new priority rules – more favourable to freight trains – would apply. Research, such as the EU-funded New Opera project, has shown that giving relative priority to freight increases the overall performance of the network¹.

The corridors would be proposed jointly by Member States and infrastructure managers and be validated by the European Commission. For each corridor, priority rules and the types of

¹ New Opera project Final report: <http://www.newopera.org/files/web%20newopera2.pdf>

freight that would benefit would be defined by a governance body composed of infrastructure managers (IMs) along the corridor. This governance body would also be in charge of drawing up the implementation plan on the corridor.

EIM and UNIFE acknowledge that many of their recommendations have been included in the proposal. The references to authorised applicants (art. 13) and to performance schemes (art. 16.1) and performance indicators (art. 16.2) are particularly welcome.

Therefore, **EIM and UNIFE generally agree with the spirit of the proposed regulation**, but have concerns about some aspects of the proposal, detailed below.

2. Towards market oriented corridors

Both the creation and the implementation of corridors refer to a **market-based approach**. EIM and UNIFE welcome this as it will allow the corridors to be based on reality and the needs of the rail freight market. The creation of corridors will also be subject to a socio-economic analysis which should take passenger traffic into account.

EIM and UNIFE would like to stress that the **inclusion of external costs** in the analysis (Art. 3.1.c) is an additional reason to internalise these costs for all modes of transport and not grant the road sector an unjustified legal exemption (see debate on Eurovignette III Directive).

The **creation of corridors should be flexible**, depending on each country's needs, and not strictly linked to fixed criteria such as the volume of freight carried (Art. 3.3). Being part of the TEN-T network should not be a rigid criterion (art. 3.1.a). Parts of the rail network whose integration in a corridor would be relevant (e.g. alternative routes or some connections to ports) are sometimes not part of the TEN-T². Besides, the TEN-T criteria might reduce the opportunity to create additional corridors in the future.

Furthermore, all decisions concerning the corridor such as investment decisions should be made as transparently as possible and should be published.

3. Priority rules should be used in a smart way

The main innovation of the proposal is the **definition of priority rules** that would be more favourable to some categories of freight. EIM and UNIFE support the definition of different categories of freight, and agree with the fact that these categories should be defined by IMs (Art. 11). However, a reference to goods that are “very time sensitive” is not the right way to determine which freight trains should get the highest level of priority.

The way priority freight trains will be granted effective priority, both for the definition of the timetable and traffic management, should be based on a **pragmatic approach**.

Freight traffic is not as predictable as passenger traffic. It is therefore difficult to estimate the amount of capacity that should be reserved. **Reserving capacity** one year in advance for priority freight might lead to a waste of capacity, if this capacity is not used (art. 12.1).

² Connections to harbours of Le Havre and Dunkerque (France) are for example not part of the TEN-T network

The impossibility of cancelling priority freight trains paths three months before their scheduled time might hinder the **necessary flexibility of traffic management** (Art. 12.5). Moreover, there is no mention of the consequences of a path cancellation within these three months. The regulatory bodies should play the role of the appeals body in these circumstances.

In case of traffic disturbance, EIM and UNIFE are in favour of more flexible principles that would allow infrastructure managers to take decisions that focus on the reduction of delays to priority freight trains while also aiming at **minimising overall delays**. The development of contingency plans for key routes would help to reduce freight trains delays by ensuring a fair allocation of available capacity.

4. What role for existing organisations?

EIM and UNIFE welcome the fact that the selection criteria take into account existing corridors such as Rail Net Europe (RNE) or ERTMS corridors (criteria in the Annex). However, as it is the case for regulatory bodies, the Commission fails to draw all the lessons from their experience.

a. Role of regulatory bodies should be strengthened

National regulatory bodies, and cooperation between them, are recognized as important (Art. 17). They should also be given the means to act in an efficient way. For instance, complaints from applicants concerning the implementation plan should be addressed to regulatory bodies rather than to the European Commission (Art. 6).

Regulatory bodies should also control the coordination of performance schemes along the corridor (Art. 16.1) and the cancellation of a “priority freight” path.

b. RailNetEurope and One Stop Shops to be further developed

The role of RNE should be clarified. It could serve as an important basis for the development of corridors. RNE has already developed the experience of one stop shops (OSS), which are required to manage international path allocation (Art. 10).

However, current OSS have proven not to be efficient enough. EIM and UNIFE believe that RNE should better organise OSS to answer path requests along corridors in a more effective way.

c. ERTMS corridors to be promoted

All six existing ERTMS corridors will certainly qualify as “freight corridors” in the sense of the proposed regulation. A simplified procedure should be set up for the use of the proposed regulation along ERTMS corridors.

5. Cooperation between infrastructure managers

Concerning the coordination of heavy maintenance works on corridors (Art. 8), EIM and UNIFE agree that it is necessary to improve quality of international train paths. Coordination should be extended to all works that would restrict available capacity on the network. This issue should be linked with multi-annual agreements (or multi annual contracts - MACs) so that works can be better coordinated. Indeed MACs would provide IMs with a clear schedule of works to be carried on the long term.

6. Conclusion

EIM and UNIFE are generally satisfied with the proposed regulation. It is a sound basis for the creation of a European freight priority network, provided that the above concerns are clearly addressed. The market-oriented approach should be further developed in order to allow more flexibility, both for the creation of corridors and for the management of freight traffic on these corridors, which will eventually boost rail freight growth.

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EIM, the association of European Rail Infrastructure Managers, was established to promote the interests and views of the independent infrastructure managers in Europe, following liberalisation of the railway market, with a view to supporting the development of the rail industry. It is a lobbying organisation which also provides technical expertise to the appropriate European bodies. To find out more about EIM, visit www.eimrail.org

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UNIFE represents the interests of the European Rail Industry towards the European institutions, international railway associations and other business relations. The European Rail Industry provides competitive railway systems for increased rail traffic and follows the objective of making rail transport the sustainable solution for the challenges of the 21st century mobility. The European Rail Industry consists of trend setting industries in the field of rolling stock, infrastructure, information technology and signalling, provision of part and services. For more information, see www.unife.org

Proposal for a Regulation concerning a European rail network for competitive freight
EIM - UNIFE Proposed Amendments

Amendment

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) The rail network for competitive freight should be set up in a manner consistent with the Transeuropean Transport Network (“TEN-T”). To that end, the coordinated development of the two networks is necessary, and in particular the integration of the international corridors for rail freight into the existing TEN-T. ***Furthermore, uniform rules relating to these freight corridors should be established at Community level. If necessary, the creation of these corridors could be supported financially within the framework of the TEN-T programme.***

Amendment

(7) The rail network for competitive freight should be set up in a manner consistent with the Transeuropean Transport Network (“TEN-T”) ***and the European Railway Traffic Management System (“ERTMS”) corridors.*** To that end, the coordinated development of the two networks is necessary, and in particular the integration of the international corridors for rail freight into the existing TEN-T ***and ERTMS corridors.***

The creation and development of these corridors should be supported financially within the framework of the TEN-T programme, the Research Framework Programme, the Cohesion and Structural programme or other funding programmes of the European Union.

Justification

The definition of freight corridors should be set up in a consistent and sustainable manner with the already existing networks in the European Union, especially with the ERTMS corridors. But the rules concerning these freight corridors do not have to be strictly defined at European level.

Other financing sources than the TEN-T programme might be used to support the creation of corridors.

Amendment

Proposal for a regulation

Article 2 - paragraph 2

Text proposed by the Commission

Amendment

(c) “heavy maintenance work” shall Delete mean any intervention or repair to the railway infrastructure and its equipment which is necessary for running the trains along the freight corridor and involving reservations on the capacities for the infrastructure in accordance with Article 28 of Directive 2001/14/EC;

Justification

The regulation should not only address “heavy maintenance works” but all the works as soon as they may restrict the available capacity. The nature of the works, whether they concern maintenance, renewal, building or other operations, should not be taken into consideration. The only important element is the restriction of available capacity on the corridor.

Amendment

Proposal for a regulation

Article 3 - paragraph 3³

Text proposed by the Commission

3. The freight corridors shall be created in accordance with the following procedure:

a) at the latest **one year** after the entry into force of this Regulation, the territory of each Member State which has at least two **land borders** with other Member States must allow at least one proposal for a freight corridor;

b) at the latest three years after the entry into force of this Regulation, the territory of each Member State must allow at least:

i) one freight corridor,

ii) two freight corridors if the annual performance of rail freight in the Member State concerned is greater than or equal to **30** billion tonne-kilometres,

iii) **three freight corridors if the annual performance of rail freight in the Member State concerned is greater than or equal to 70 billion tonne-kilometres.**

Amendment

3. The freight corridors shall be created in accordance with the following procedure:

a) at the latest **eighteen months** after the entry into force of this Regulation, the territory of each Member State which has **direct railway links to** at least two other Member States **on which freight transport is operated** must allow at least one proposal for a freight corridor;

b) at the latest three years after the entry into force of this Regulation, the territory of each Member State must allow at least:

i) one freight corridor,

ii) two freight corridors if the annual performance of rail freight in the Member State concerned is greater than or equal to **40** billion tonne-kilometres.

Justification

There are a number of steps to be taken before corridors can be established including: market studies, consultations, international negotiations, new operational rules to be drawn up and safety approved. Proposing the first corridors only one year

³ This proposed amendment is not supported by Banverket

after the regulation is published would not provide enough time to meet all the requirements needed for their definition.

The border criterion is not precise enough; the reference to the existence of cross border rail freight traffic is more accurate.

The creation of a corridor should be based on market needs: criteria that are only based on volumes of freight transported are too rigid.

Amendment

Proposal for a regulation

Article 7 - paragraph 3

Text proposed by the Commission

Where applicable, investment plans shall refer to the Community contribution envisaged under the TEN-T programme and prove that their strategy is consistent with *it*.

Amendment

Where applicable, investment plans shall refer to the Community contribution envisaged under the TEN-T programme ***and other EU-funding programmes*** and prove that their strategy is consistent with ***them***.

Justification

It should be possible to combine a number of EU funding instruments in the most effective manner so as to allow for a swift implementation and a best use of the freight-oriented corridors.

Amendment

Proposal for a regulation

Article 8

Text proposed by the Commission

Amendment

Heavy maintenance work

The infrastructure managers in the freight corridor shall coordinate ***at least once a year*** their schedule for carrying out ***heavy maintenance*** work on the infrastructure and its equipment.

Coordination of works

The infrastructure managers in the freight corridor shall coordinate, ***according to an appropriate manner and timeframe and respecting their respective contractual agreements as defined in Article 6 of Directive 2001/14EC***, their schedule for carrying out ***all the*** works on the infrastructure and its equipment ***that would restrict available capacity on the network***.

Justification

Infrastructure managers should coordinate all their works on the infrastructure as soon as these works may restrict the available capacity.

Works should be coordinated according to multi-annual agreements (or multi-annual contracts) agreed by infrastructure managers in application of Directive 2001/14/EC.

Amendment

Proposal for a regulation

Article 10 - paragraph 2

Text proposed by the Commission

2. **All** requests for train paths for a freight train crossing at least one border or using several networks along the freight corridor **must** be made to the one-stop shop referred to in paragraph 1 above.

Amendment

2. Requests for train paths for a freight train crossing at least one border or using several networks along the freight corridor **may** be made to the one-stop shop referred to in paragraph 1 above.

Justification

Applicants must still have the opportunity to use the traditional way to request paths (requests directly addressed to individual infrastructure managers) as One Stop Shops have not proven to be efficient enough so far.

More resources allocated to One Stop Shops should trigger an increased obligation to use them for international paths requests on the corridor. However, when One Stop Shops provide more efficient services, applicants will naturally change their practices and use them.

Amendment

Proposal for a regulation

Article 11 - paragraph 1

Text proposed by the Commission

1. The governance body shall define the standard categories of freight traffic, which shall be valid in the whole of the freight corridor. At least one of these categories (*hereinafter referred to* as "priority freight") shall ***include goods whose transportation is very time-sensitive and which therefore require an efficient transport time and guaranteed punctuality.***

Amendment

1. The governance body shall define the standard categories of freight traffic, which shall be valid in the whole of the freight corridor. At least one of these categories shall ***be defined*** as "priority freight".

Justification

EIM supports the definition of different categories of freight. However the reference to “goods whose transportation is very time-sensitive and which therefore require an efficient transport time and guaranteed punctuality” is not clear enough to define which freight trains should get the highest level of priority.

Governance bodies should be given full responsibility to define the categories of freight on a corridor, according to market needs and the specificities of that corridor.

Amendment

Proposal for a regulation

Article 12 – paragraph 1

Text proposed by the Commission

1. **Notwithstanding** Article 20(2) of Directive 2001/14/EC, the infrastructure managers of the freight corridor shall reserve the capacity needed for priority freight traffic for the coming financial year, prior to the annual exercise to define the working timetable referred to in Article 18 of Directive 2001/14/EC and using as a basis the freight traffic observed and the market study defined in Article 5(1).

Amendment

1. **In addition to the cases mentioned in** Article 20(2) of Directive 2001/14/EC, the infrastructure managers of the freight corridor shall reserve, **if necessary and on the basis of the evaluation of such a need**, the capacity needed for priority freight traffic for the coming financial year, prior to the annual exercise to define the working timetable referred to in Article 18 of Directive 2001/14/EC and using as a basis the freight traffic observed and the market study defined in Article 5(1).

Justification

The reserve of capacity should not be made mandatory. Furthermore, it should be up to the infrastructure managers to analyse and decide whether such a reserve is necessary or not.

Amendment

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The infrastructure managers shall keep a reserve of capacity within the final working timetable to allow them to respond quickly and appropriately to ad hoc requests for capacity as referred to in Article 23 of Directive 2001/14/EC. This capacity must be sufficient to allow requests for train paths to be met while guaranteeing a sufficient level of quality for the allocated train path in terms of journey times on the train path and timetables adapted to freight traffic

Amendment

2. The infrastructure managers shall keep, ***if necessary***, a reserve of capacity within the final working timetable to allow them to respond quickly and appropriately to ad hoc requests for capacity as referred to in Article 23 of Directive 2001/14/EC. This capacity must be sufficient to allow requests for train paths to be met while guaranteeing a sufficient level of quality for the allocated train path in terms of journey times on the train path and timetables adapted to ***priority*** freight traffic.

Justification

The reserve of capacity should not be made mandatory. Furthermore, it should be up to the infrastructure managers to analyse and decide whether such a reserve is necessary or not.

Amendment

Proposal for a regulation Article 12 - paragraph 5

Text proposed by the Commission

5. ***Save in the case of force majeure***, a train path allocated to a priority freight operation ***may not be*** cancelled less than three ***months*** before its working timetable ***if*** the applicant concerned ***does not give their*** approval ***for such cancellation***.

Amendment

5. ***If*** a train path allocated to a “priority freight” operation ***is*** cancelled less than three ***days*** before its working timetable ***without the*** approval ***of*** the applicant concerned, ***the applicant may refer the matter to the regulatory body***.

As referred to in Article 27 of Directive 2001/14/EC, infrastructure managers may specify in their network statement conditions whereby they will take account of previous levels of utilisation of priority freight train paths in determining priorities for the allocation process.

Justification

Making it impossible to cancel “priority freight” trains paths three months before their scheduled time would hinder the flexibility needed for traffic management. This rule needs to be more flexible.

Moreover, there is no mention of the consequences of a path cancellation. The regulatory bodies should be the appeals body in these circumstances.

In case of cancellation by an applicant, infrastructure managers should be encouraged to apply article 27 of Directive 2001/14/EC (“use it or lose it” principle).

Amendment

Proposal for a regulation

Article 13

Text proposed by the Commission

Notwithstanding Article 16(1) of Directive 2001/14/EC, applicants other than railway undertakings and the international groupings that they make up, may request train paths for freight transport where the latter concern one or more sections of the freight corridor.

Amendment

Notwithstanding Article 16(1) of Directive 2001/14/EC, applicants other than railway undertakings and the international groupings that they make up, may request train paths for freight transport where the latter concern one or more sections of the freight corridor.

As defined in Article 16(2) and Article 16(3) of Directive 2001/14/EC, infrastructure managers of the corridor may set and publish requirements with regard to applicants to ensure that their legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded.

Justification

Article 16 of Directive 2001/14/EC already allows authorised applicants to request train paths. This should be extended to path requests on the freight corridor. However, infrastructure managers should have the possibility to set requirement in order to avoid an artificial saturation of their network.

Amendment

Proposal for a regulation Article 14 - paragraph 2

Text proposed by the Commission

2. The rules of priority referred to in paragraph 1 above must at least ***provide that the train path allocated to a priority freight train complying with the initial provisions for its train path may neither be reallocated to another train, nor modified, except where the initial holder of the train path agrees to reallocation to another train or modification of the train path.***

Amendment

2. The rules of priority referred to in paragraph 1 above must at least ***aim at minimizing overall delays while focusing on “priority freight” trains delays.***

The governance body shall, in conjunction with applicants, develop and publish:

- ***train regulation principles that shall ensure that “priority freight” trains receive the best treatment possible regarding the allocation of the reduced capacity;***
- ***contingency plans in case of disruption on the corridor that are based on these principles.***

Justification

In case of disturbance, infrastructure managers should give priority to “priority freight” trains. However they must have enough flexibility to be able to minimize overall delays.

Elaborating and publishing train regulation principles and contingency plans in case of disruption would provide useful guidelines for infrastructure managers, while assuring clarity and transparency to applicants.

Amendment

Proposal for a regulation

Article 16 - paragraph 2 (NEW)

Amendment

2. The regulatory bodies shall control the consistency between the performance schemes along the freight corridor.

Justification

Regulatory bodies should ensure that performance schemes are consistent with the common principles defined by infrastructure managers, as referred to in paragraph 1.

The reference to performance schemes is welcome. However, consistency between performance schemes can only be reached through cooperation of infrastructure managers.

Amendment

Proposal for a regulation Article 17 - paragraph 2

Text proposed by the Commission

2. In the event of a complaint from an applicant regarding international rail freight services, or within the framework of a routine enquiry, the regulatory body concerned shall consult the regulatory body of any other Member State on the territory of which the freight corridor concerned passes and request the necessary information from them before taking its decision. The other regulatory bodies shall provide all the information that they themselves have the right to request under their national legislation. Where necessary, the regulatory body receiving the complaint or having initiated the routine enquiry shall transfer the file to the regulatory body responsible in order to take measures regarding the parties concerned.

Amendment

2. In the event of a complaint from an applicant regarding international rail freight services, ***the implementation plan***, or within the framework of a routine enquiry, the regulatory body concerned shall consult the regulatory body of any other Member State on the territory of which the freight corridor concerned passes and request the necessary information from them before taking its decision. The other regulatory bodies shall provide all the information that they themselves have the right to request under their national legislation. Where necessary, the regulatory body receiving the complaint or having initiated the routine enquiry shall transfer the file to the regulatory body responsible in order to take measures regarding the parties concerned, ***in accordance with the procedure established in Article 30(5) of Directive 2001/14/EC.***

Justification

The role of regulatory bodies should be strengthened. Complaints concerning the implementation plan, as referred to in Article 6 paragraph 2, should be addressed to regulatory bodies.

The coordination of regulatory bodies should be made compatible with the existing provisions in Directive 2001/14/EC.

Amendment

Proposal for a regulation

Article 21 - paragraph 3

Text proposed by the Commission

The Member States concerned shall submit to the Commission, every two years from the time of creation of the freight corridor, a file showing the results of their cooperation as referred to in Article 4(1). The Commission shall analyse this file and notify the committee referred to in Article 18 of its analysis.

Amendment

The Member States concerned shall submit to the Commission, every two years from the time of creation of the freight corridor, a file showing the results of their cooperation as referred to in Article 4(1). The Commission shall analyse this file and notify the committee referred to in Article 18 of its analysis.

These reports shall be published.

Justification

In order to ensure transparency, these reports need to be publicly available.

Amendment

Proposal for a regulation

Annex – point (b)

Text proposed by the Commission

Amendment

(b) the freight corridor must be part of the TEN-T; ***Delete***

Justification

Requiring corridors to be part of the TEN-T will not allow the flexibility required by a market based approach.