



**COUNCIL OF
THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject: Proposal for a Regulation of the European Parliament and of the Council
 concerning a European rail network for competitive freight
 - Adopted by the Council on 22 February 2010

STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

On 15 December 2008, the Commission presented its proposal for a Regulation of the European Parliament and of the Council concerning a European rail network for competitive freight.

On 23 April 2009, the European Parliament voted its opinion at 1st reading.

On 11 June 2009, the Council reached a political agreement on the proposed Regulation.

On 22 February 2010, the Council adopted its position at first reading in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee¹ and the Committee of Regions².

II. Analysis of the Council position at first reading

1. General

On 15 December 2008, the Commission submitted the proposal for a Regulation concerning a European rail network for competitive freight. The objective of the proposed Regulation is to create a European rail network for competitive freight consisting of international corridors providing operators with an efficient and high-quality freight transport infrastructure. As a result, rail operators should be able to offer an efficient, high-quality service and be more competitive on the goods transport market. To this end, the proposal sets out the rules for the creation and the modification of freight corridors, their organisation and governance, and measures for implementing freight corridors, investment planning as well as capacity and traffic management.

¹ Opinion of 15 July 2009 (not yet published in the Official Journal).

² (not yet published in the Official Journal).

The Council position at first reading establishes a coherent framework for the establishment of a European rail network for competent freight. It foresees a simpler procedure, on the basis of a list of principal routes of corridors, for the establishment of initial freight corridors. This initial list should be completed by the Member States not mentioned in Annex I of the Regulation which will establish freight corridors at a later stage. The Council approach furthermore foresees the possibility of derogations. It also includes a better structured system of governance of freight corridors. The Council also agreed to establish a more flexible system for requests of train paths for freight trains based on increased cooperation between infrastructure managers.

2. Main issues

i) Selection of freight corridors

The Commission proposed a procedure according to which each Member State would have to create at least one corridor with other Member State(s) concerned. Furthermore, some Member States would be obliged to create at least two or three corridors on the basis of the annual performance expressed in tonne-kilometres of rail freight in those Member States.

The Council adopted another solution which consists in the establishment, within certain time-limits specified, of initial freight corridors according to the list of principal routes of corridors set out in Annex I to the Regulation and the obligation for the Member States not mentioned in that list to participate in the establishment of at least one freight corridor. Member States shall also participate in the establishment of the corridor or in the prolongation of an existing corridor, in order to guarantee a neighbouring Member State to fulfil the obligation to establish at least one freight corridor.

The above solution includes two possible derogations from the obligation to participate in the establishment of a freight corridor. The first derogation would be justified under certain conditions such as the lack of interest of applicants likely to use the corridor, no socio-economic benefits or a disproportionate burden to establish the corridor. This derogation is subject to a decision by the Commission according to the comitology procedure. The second derogation might apply to a Member State with a rail network which has a track gauge different from that of the main rail network within the Union.

The European Parliament introduced the following amendments to the Commission proposal:

- the freight corridor should link at least two Member States and be compatible with the TEN-T or the ERTMS corridors. If necessary, certain sections not included in the TEN-T, with high or potentially high volumes of freight traffic, might also form part of the freight corridor;
- the creation or modification of a freight corridor shall be decided by the Member States concerned, after they have notified the Commission of their intentions, accompanied by a proposal drawn up with the infrastructure managers concerned and taking into account the initiatives and opinions of railway undertakings that use the corridor or are interested in doing so. Interested railway undertakings may participate in the process, whenever substantial investments concern them;
- the criteria for the creation of freight corridors should be defined in a way adapted to the specific needs of the Member States and of the infrastructure managers allowing them sufficient decision-making and management scope;
- at the latest three years after the entry into force of the Regulation, the territory of each Member State must allow at least one freight corridor;
- the Commission shall note the proposals for the creation of the freight corridor and shall examine their consistency with the assessment criteria set out in the Annex to the Regulation.

ii) Governance of freight corridors

The Commission proposed that for each freight corridor the infrastructure managers concerned should create a governance body responsible for defining and steering the performance and updating of the implementation plan for the freight corridor. Furthermore, a working group made up of managers and owners of the strategic terminals of the freight corridor should be established. The working group might issue an opinion on any proposal by the governance body which had direct consequences for investment and the management of strategic terminals. The governance body might not take any decision contrary to that opinion.

The Council modified the Commission proposal and decided that, for each freight corridor, Member States concerned shall establish an executive board responsible for defining the general objectives of the freight corridor, supervising and taking specified measures with regard to implementation and investment planning. The executive board shall be composed of representatives of the authorities of the Member States concerned.

Moreover, for each freight corridor, the infrastructure managers concerned shall establish a management board responsible for taking specified measures with regard to implementation, investment planning, infrastructure capacity and quality of service. The management board shall be composed of the representatives of the infrastructure managers.

The management board shall also set up an advisory group made up of managers and owners of the terminals of the freight corridor. This advisory group may issue an opinion on any proposal by the management board which has direct consequences for investment and the management of terminals. It may also issue own-initiative opinions. The management board shall take any of these opinions into account.

The European Parliament followed largely the Commission proposal. However, concerning the provision on the establishment of a governance body for each freight corridor, it suggested that interested railway undertakings or groupings of railway undertakings using the freight corridor should regularly participate in this body on a consultative basis.

The European Parliament also suggested that the Member States concerned might set up an executive board responsible for authorising the corridor implementation plan by the governance body and supervising its execution.

Finally, when setting up a working group made up of managers and owners of the strategic terminals of the freight corridor, as proposed by the Commission, it should also include representatives from sea and inland waterway ports.

iii) Strategic terminals and priority freight

The Commission proposed that the governance body should draw up a strategy for the development of strategic terminals to enable them to meet the needs of rail freight running on the freight corridor.

Furthermore, the Commission proposed that the governance body should define the standard categories of freight traffic, which should be valid in the whole of the freight corridor. At least one of these categories, referred to as "priority freight", should include goods whose transportation is very time-sensitive and which therefore require an efficient transport time and guaranteed punctuality.

The Council in its position at first reading deleted the articles proposed by the Commission on the above issues. Concerning strategic terminals, it was considered that it should be up to the market to decide on this issue. On priority freight, it was agreed that it might discriminate, in particular, towards the passenger trains.

The European Parliament followed largely the Commission proposal. However, concerning strategic terminals it suggested to add a reference to an integrated strategy including intermodal hubs along the freight corridors. This strategy should include co-operation with regional, local and national authorities, the sourcing of land to develop rail freight terminals and to facilitate access to funds in order to encourage such developments. Furthermore, the governance body should ensure that sufficient terminals are created in strategic locations, based on the expected volume of traffic.

Concerning the article on priority freight, the European Parliament decided to change the title to "Standard categories of train paths in the freight corridors", and its text should be adapted accordingly and refer to periodical updates of the standard categories of freight train paths, which should be valid in the whole of the freight corridor. At least one of these categories (referred to as "facilitated freight") should include a train path with an efficient transport time and guaranteed punctuality. Moreover, the criteria defining the standard categories of freight traffic should be adopted by the governance body after consultation of the applicants likely to use the freight corridor.

iv) One-stop shop for requests for international train paths

The Commission proposed that the governance body should put in place a one-stop shop for requests for train paths for freight trains crossing at least one border along the freight corridor and that all requests for these train paths should be made to this one-stop shop.

The Council did not agree on the mandatory procedure proposed by the Commission and decided instead that the management board for a freight corridor shall designate or establish a joint body and/or an information system through collaboration between infrastructure managers which should offer the applicants the opportunity to request in a single place and a single operation infrastructure capacity for freight trains crossing at least one border along the freight corridor.

The European Parliament followed largely the Commission proposal. However, it decided to suggest that individual infrastructure managers of a freight corridor might be assigned to function as the front office of the one-stop shop for the applicants requesting train paths.

v) Authorised applicants

The Commission proposal foresees the right of applicants other than railway undertakings and the international groupings that they make up to have the possibility to request train paths for freight transport where the latter concern one or more sections of the freight corridor.

The Council deleted the article concerning authorised applicants as proposed by the Commission. Instead, the Council only accepts the possibility for applicants other than railway undertakings and their international groupings to request infrastructure for certain sections of train paths, in the case these paths are located in Member States where national law accepts those requests.

The European Parliament followed the Commission proposal with a slight modification of the text.

vi) *Traffic management in the event of disturbance*

The Commission proposed that the infrastructure managers of the freight corridor should draw up and publish the rules of priority between the different types of traffic in the event of traffic disruption in the freight corridor. These rules of priority should at least provide that the train path allocated to a priority freight train complying with the initial provisions for its train path might neither be reallocated to another train nor modified, except where the initial holder of the train path agreed to reallocation to another train or modification of the train path.

The Council revised the Commission proposal and decided that the management board shall adopt common targets for punctuality and/or guidelines for traffic management in the event of disturbance to train movements on the freight corridor. Based on these targets and/or guidelines, each infrastructure manager concerned shall thereafter draw up priority rules for the management between the different types of traffic in the freight corridor. The principles for establishing the priority rules shall aim at minimising the overall network recovery time with regard to the need of all types of transport.

The European Parliament followed broadly the Commission proposal but accepted that the infrastructure managers of the freight corridor should draw up and publish the rules of priority between the different types of train paths, in particular on the train paths allocated to delayed trains, in the event of traffic disruption for each part of the freight corridor in the network. This shall follow a proposal of the governance body of the freight corridor while respecting the principles and plans referred to in the Article.

vii) Derogation

The Commission proposed that a Member State might derogate, where applicable, from the provisions of the Regulation by sending a substantial request for derogation to the Commission. The Commission should adopt a decision on that request, in compliance with a defined consultation procedure, taking into consideration the geographical situation and the development of rail freight transport services in the Member State which has requested derogation.

The Council deleted the above provision proposed by the Commission. Instead, it agreed on an article concerning "transitional measures" which lays down that the obligation to implement this Regulation shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no railway system is established within their territory.

The European Parliament followed the Commission proposal.

3. Other amendments adopted by the European Parliament

Further amendments not included in the Council position at first reading concern in particular:

- a reference to optimisation and reliability of rail freight traffic;
- research and Marco Polo programmes, and other Union policies and funds, such as the Cohesion Fund;
- the setting up of effective and adequate links to other modes of transport in order to develop an efficient and integrated freight transport network;
- the procedure for the definition of performance indicators;
- modifications to the definitions set out in Article 2;
- the adjustment of the implementation plan;
- the inclusion of a reference to potential bottlenecks;
- a programme for improvement of the freight corridor;
- a market study to be periodically updated;
- programmes for creating and improving performance in the freight corridor;

- applicants who intend to use the freight corridor;
- the strategy for investment plans;
- investment plans;
- a reserve of capacity;
- a fee for paths that are allocated but not used;
- the rules of priority;
- consistency between different performance schemes;
- the information to be provided by the infrastructure managers and other third parties involved in international capacity allocation to the regulatory bodies.

III. Conclusion

In establishing its position at first reading, the Council has taken full account of the proposal of the Commission and of the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a number of amendments have - in spirit, partially or fully - already been included in its position at first reading.
