III

(Preparatory acts)

COUNCIL

POSITION (EU) No 2/2010 OF THE COUNCIL AT FIRST READING

with a view to the adoption of 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee (1),

Having regard to the opinion of the Committee of the Regions (2),

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

(1) Within the framework of the Lisbon Strategy for growth and employment and the European Union Strategy for Sustainable Development, the creation of an internal rail market, in particular with regard to freight transport, is an essential factor in making progress towards sustainable mobility.


(3) In order to be competitive with other modes of transport, international and national rail freight services, which have been opened up to competition since 1 January 2007, must be able to benefit from a good quality and sufficiently financed railway infrastructure, that is, one which allows freight transport services to be provided under good conditions in terms of commercial speed and journey times and to be reliable, that is, that the service it provides actually corresponds to the contractual agreements entered into with the railway undertakings.

(4) The opening of the rail freight market has made it possible for new operators to enter the rail network. To optimise the use of the network and ensure its reliability it is useful to introduce additional procedures to strengthen cooperation on allocation of international train paths between infrastructure managers.

(2) OJ C 79, 27.3.2010, p. 45.
The international rail corridors for a European rail network for competitive freight, on which freight trains run under good conditions and easily pass from one national network to another, would allow improvements in the conditions of use of the infrastructure.

In this context, the establishment of international rail corridors for a European rail network for competitive freight should be set up and conditions should be created which are favourable to the development of competition between rail freight service providers.

This Regulation should be without prejudice to the rights and obligations of infrastructure managers set out in Directive 91/440/EEC and Directive 2001/14/EC and, where relevant, allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC. Those acts remain in force, including in respect of provisions which affect freight corridors, in particular in respect of the right of infrastructure managers to refuse or accept applications for capacity from legal entities other than railway undertakings.

The international rail corridors for a European rail network for competitive freight should be set up in a manner consistent with the Trans-European Transport Network ('TEN-T') and/or the European Railway Traffic Management ('ERTMS') corridors. To that end, the coordinated development of the networks is necessary, and in particular as regards the integration of the international corridors for rail freight into the existing TEN-T and the ERTMS corridors. Furthermore, harmonising rules relating to those freight corridors should be established at the level of the Union. If necessary, the creation of those corridors should be supported financially within the framework of the TEN-T, research and Marco Polo programmes, and other policies and funds of the Union, such as the European Regional Development Fund or the Cohesion Fund.

Further to the freight corridors set up in accordance with Article 3, the establishment of additional freight corridors should be examined and approved at the level of the Union in accordance with clearly defined transparent procedures and criteria which allow Member States and infrastructure managers sufficient decision-making and management scope so that they can take into account existing initiatives for special corridors, e.g. ERTMS, RailNetEurope (RNE) and TEN-T, and take measures adapted to their specific needs.

In order to stimulate coordination between the Member States and the infrastructure managers, an appropriate governance structure for each freight corridor should be established, taking account of the need to avoid duplication with already existing governance structures.

In order to meet market needs, the methods for establishing a freight corridor should be presented in an implementation plan, which should include identifying and setting a schedule for measures which would improve the performance of rail freight. Furthermore, to ensure that planned or implemented measures for the establishment of a freight corridor meet the needs or expectations of all of the users of the freight corridor, the applicants likely to use the freight corridor must be regularly consulted in accordance with procedures defined by the management board.

The development of intermodal freight terminals should also be considered necessary to support the establishment of rail freight corridors in the Union.

In order to guarantee the consistency and continuity of the infrastructure capacities available along the freight corridor, investment in the freight corridor should be coordinated between Member States and the infrastructure managers concerned, and planned in a way which meets the needs of the freight corridor. The schedule for carrying out the investment should be published to ensure that applicants who may operate in the corridor are well-informed. The investment should include projects relating to the development of interoperable systems and the increase in capacity of the trains.

For the same reasons, all the works on infrastructure and its equipment that would restrict available capacity on the freight corridor should also be coordinated at the level of the freight corridor and be the subject of updated publications.

In order to facilitate requests for infrastructure capacities for international rail freight services, it is appropriate to designate or establish a one-stop shop for each freight corridor. For this, existing initiatives should be built upon, in particular those undertaken by RNE, a body which acts as a coordination tool for the infrastructure managers and provides a number of services to international freight undertakings.
(18) The management of freight corridors should also include procedures for the allocation of the infrastructure capacity for international freight trains running on such corridors. Those procedures should recognise the need for capacity of other types of transport, including passenger transport.

(19) To ensure that the railway infrastructure is better used, the operation of that infrastructure and the terminals along the freight corridor needs to be coordinated.

(20) Priority rules may also mean priority targets depending on the situation in the respective Member State.

(21) Freight trains running on the freight corridor should be able to enjoy, as far as possible, sufficient punctuality in the event of disturbance with regard to the needs of all types of transport.

(22) In order to evaluate objectively the benefits of the measures aimed at the establishment of the freight corridor, the performance of the rail freight services along the freight corridor should be monitored and quality reports should be published regularly. The evaluation of the performance should include the outcome of satisfaction surveys of the users of the freight corridor.

(23) In order to ensure non-discriminatory access to international rail services, it is necessary to ensure efficient coordination between the regulatory bodies over the different networks covered by the freight corridor.

(24) To facilitate access to information concerning the use of all the main infrastructure in the freight corridor and to guarantee non-discriminatory access to that corridor, the management board should draw up, regularly update and publish a document containing all of this information.

(25) Since the objective of this Regulation, namely the establishment of a European rail network for competitive freight made up of freight corridors, cannot be sufficiently achieved by the Member States alone and can therefore by reason of its scale and effects be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(26) Fair rules based on cooperation between the infrastructure managers, who must provide a quality service to freight undertakings within the framework of an international rail corridor, should be introduced in respect of the coordination of investment and the management of capacities and traffic.

(27) As international trains need to run itineraries combining several corridors, as defined in this Regulation, the infrastructure managers of several corridors may also coordinate their activities in order to ensure, on the corridors concerned, the availability of capacity, fluid movements and a coherent application of priority rules to the different types of traffic in the event of disturbance.

(28) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).

(29) In addition, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of the adaptation of Annex II. It is of particular importance that the Commission consult experts during its preparatory work, in accordance with the commitments made in the Commission Communication of 9 December 2009 on the implementation of Article 290 of the Treaty on the Functioning of the European Union.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Purpose and scope

1. This Regulation lays down rules for the establishment and organisation of international rail corridors for a European rail network for competitive freight. It sets out rules for the selection, organisation and management of freight corridors.

2. This Regulation shall apply to the management and use of railway infrastructure in freight corridors.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions laid down in Article 2 of Directive 2001/14/EC shall apply.

2. In addition to the definitions referred to in paragraph 1:

(a) ‘freight corridor’ means all designated railway lines in Member States and, where necessary, European third countries, linking terminals along the principal route of the freight corridor, including the railway infrastructure and its equipment, marshalling yards and train formation facilities and, where necessary, diversionary routes:

(b) ‘implementation plan’ means the document presenting the means and the strategy that the parties concerned intend to implement in order to develop over a specified period the measures which are necessary and sufficient to establish the freight corridor;

c) ‘terminal’ means the installation provided along the freight corridor which has been especially arranged to allow either the loading and/or the unloading of goods onto/from freight trains, and the integration of rail freight services with road, maritime, river and air services, and either the forming or modification of the composition of freight trains; and, where necessary, performing border procedures at borders with European third countries.

CHAPTER II
DESIGNATION AND GOVERNANCE OF THE INTERNATIONAL RAIL CORRIDORS FOR COMPETITIVE FREIGHT

Article 3
Designation of initial freight corridors
1. The Member States referred to in Annex I shall establish by … (*) the freight corridors along the principal routes set out in that Annex. The Member States concerned shall inform the Commission about the establishment of the freight corridors.

2. By derogation from paragraph 1 the freight corridors along the principal routes set out in points 3, 5 and 8 of Annex I shall be established by … (**).

Article 4
Selection of further freight corridors
1. Each Member State with a rail border with another Member State shall participate in the establishment of at least one freight corridor, unless this obligation has already been met under Article 3.

2. Notwithstanding paragraph 1, Member States shall, upon request from a Member State, participate in the establishment of the freight corridor as referred to in that paragraph or the prolongation of an existing corridor, in order to allow a neighbouring Member State to fulfil its obligation under that paragraph.

3. Without prejudice to the obligations of Member States under Article 7 of Directive 91/440/EEC, where a Member State considers that the establishment of a freight corridor would not be in the interest of the applicants likely to use the freight corridor or would not bring significant socio-economic benefits or would cause a disproportionate burden, the Member State concerned shall not be obliged to participate as referred to in paragraphs 1 and 2 of this Article, subject to a decision of the Commission acting in accordance with the advisory procedure referred to in Article 19(2).

4. A Member State shall not be obliged to participate as referred to in paragraphs 1 and 2 if it has a rail network which has a track gauge which is different from that of the main rail network within the Union.

5. In order to meet the obligation under paragraphs 1 and 2, the Member States concerned shall jointly propose to the Commission the establishment of freight corridors after consulting the infrastructure managers and applicants concerned by … (**), taking into account the criteria set out in Annex II.

6. The Commission shall examine the proposals for the establishment of freight corridor(s) referred to in paragraph 5 and, in accordance with the regulatory procedure referred to in Article 19(3), adopt a decision on the compliance of such a proposal with this Article at the latest nine months after submission of the proposal.

7. The Member States concerned shall establish the freight corridor at the latest three years after the decision of the Commission referred to in paragraph 6.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union as regards adaptations to Annex II. When preparing the delegated acts referred to in this paragraph, the Commission shall respect the provisions set out in Directive 2001/14/EC and Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) (1) and shall take into account, in particular, the deployment plan relating to the interoperable systems, the evolution of the railway system and the TEN-T and in particular the implementation of the ERTMS, as well as freight market developments, including interaction with other transport modes.

For the delegated acts referred to in this paragraph, the procedure set out in Articles 20, 21 and 22 shall apply.

Article 5
Modification of the freight corridors
1. The freight corridors referred to in Articles 3 and 4 may be modified on the basis of a joint proposal by the Member States concerned to the Commission after consulting the infrastructure managers and applicants concerned.

2. The Commission shall, in accordance with the regulatory procedure referred to in Article 19(3), adopt a decision on the proposal taking into account the criteria set out in Annex II.

3. **Two years after entry into force of this Regulation.

(*) Three years after entry into force of this Regulation.

(**) Five years after entry into force of this Regulation.

Article 6
Reconciliation

When two or more Member States concerned do not agree on the establishment or modification of a freight corridor, and with regard to the railway infrastructure located on their territory, the Commission, at the request of one of the Member States concerned, shall consult the Committee referred to in Article 19 on this matter. The opinion of the Commission shall be sent to the Member States concerned. The Member States concerned shall take this opinion into account in order to find a solution and shall take a decision on the basis of mutual consent.

Article 7
Governance of freight corridors

1. 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 the measures as expressly provided for in Articles 8, 10 and 23. The executive board shall be composed of representatives of the authorities of the Member States concerned.

2. For each freight corridor, the infrastructure managers concerned and, where relevant, the allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC, shall establish a management board responsible for taking the measures as expressly provided for in paragraph 6 of this Article and in Articles 8, 10, 12(1), 13(2), (5) and (6), 15(1), 16 and 17(2) and (3) of this Regulation. The management board shall be composed of the representatives of the infrastructure managers.

3. The executive board shall take its decisions on the basis of mutual consent of the representatives of the authorities of the Member States concerned.

4. The management board shall take its decisions, including decisions regarding its legal status, resources and staffing, on the basis of mutual consent of the infrastructure managers concerned.

5. The responsibilities of the executive and management boards shall be without prejudice to the independence of infrastructure managers as provided for in Article 4(2) of Directive 91/440/EEC.

6. The management board shall 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. The advisory group may also issue own-initiative opinions. The management board shall take any of these opinions into account.

Article 8
Measures for implementing the freight corridor plan

1. The management board shall draw up an implementation plan and shall submit it for approval to the executive board. This plan shall include:

(a) a description of the characteristics of the freight corridor, including bottlenecks, and the programme of measures necessary for creating the freight corridor;

(b) the essential elements of the transport and traffic study referred to in paragraph 3;

(c) the objectives for the freight corridors, in particular in terms of performance of the freight corridor expressed as the quality of the service and the capacity of the freight corridor in accordance with the provisions of Article 17;

(d) the investment plan referred to in Article 10; and

(e) the measures to implement the provisions of Articles 11 to 17.

2. The management board shall periodically review the implementation plan taking into account progress made in its implementation, the rail freight market on the freight corridor and performance measured in accordance with the objectives referred to in point (c) of paragraph 1.

3. The management board shall periodically carry out a transport and traffic study relating to the observed and expected changes in the traffic in the freight corridor, covering the different types of traffic, both regarding the transport of freight and the transport of passengers.

4. The implementation plan shall take into account the development of terminals to meet the needs of rail freight running on the freight corridor.

Article 9
Consulting applicants

The management board shall introduce consultation mechanisms with a view to the proper participation of the applicants likely to use the freight corridor. In particular, it shall ensure that applicants are consulted before the implementation plan referred to in Article 8 is submitted to the executive board.

CHAPTER III
INVESTMENT IN THE FREIGHT CORRIDOR

Article 10
Investment planning

1. The management board shall draw up and periodically review an investment plan and shall submit it for approval to the executive board. This plan shall include:

(a) the list of the projects foreseen for the extension, renewal or redeployment of railway infrastructure and its equipment along the freight corridor and the relevant financial requirements and sources of finance;
(b) a deployment plan relating to the interoperable systems along the freight corridor which satisfies the essential requirements and the technical specifications for interoperability which apply to the network as defined in Directive 2008/57/EC. This deployment plan shall be based on a cost-benefit analysis of the use of interoperable systems;

c) a plan for the management of the capacity of freight trains which may run in the freight corridor. This plan may be based on increasing the length, loading gauge or axle load authorised for the trains running in the freight corridor; and

d) where applicable, reference to the contribution of the Union envisaged under financial programmes of the Union.

2. The application of this Article shall be without prejudice to the competence of the Member States regarding planning of and funding to rail infrastructure.

Article 11
Coordination of works
The infrastructure managers concerned shall coordinate and publish, according to an appropriate manner and timeframe, their schedule for carrying out all the works on infrastructure and its equipment that would restrict available capacity on the freight corridor.

CHAPTER IV
MANAGEMENT OF THE FREIGHT CORRIDOR

Article 12
One-stop shop for application for infrastructure capacity
1. The management board for a freight corridor shall designate or establish a joint body and/or an information system through collaboration between infrastructure managers offering 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 ‘one-stop shop’).

2. The one-stop shop shall also provide basic information concerning the allocation of the infrastructure capacity, including the information referred in Article 16.

3. The one-stop shop shall forward any application for infrastructure capacity without any delay to the competent infrastructure managers and, where relevant, the allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC, who shall take a decision on that application in accordance with Article 13 and Chapter III of that Directive.

4. The activities of the one-stop shop shall be carried out under transparent and non-discriminatory conditions. These activities shall be subject to control of the regulatory bodies in accordance with Article 18.

Article 13
Capacity allocated to freight trains
1. Member States shall cooperate on defining the framework for the allocation of the infrastructure capacity in the freight corridor in accordance with their competences as set out in Article 14(1) of Directive 2001/14/EC.

2. The management board shall evaluate the need for capacity to be allocated to freight trains running on the freight corridor taking into account the transport and traffic study referred to in Article 8(3) of this Regulation, the requests for infrastructure capacity relating to the past and present working timetables and the framework agreements.

3. On the basis of the evaluation specified in paragraph 2 of this Article, infrastructure managers of the freight corridor shall jointly define and organise international pre-arranged train paths for freight trains following the procedure referred to in Article 15 of Directive 2001/14/EC recognising the need for capacity of other types of transport, including passenger transport. These pre-arranged paths shall be published no later than three months before the final date for receipt of requests for capacity referred to in Annex III to Directive 2001/14/EC. The infrastructure managers of several freight corridors may, if necessary, coordinate international pre-arranged train paths offering capacity on the freight corridors concerned.

4. Infrastructure managers of the freight corridor shall allocate these pre-arranged paths first to freight trains which cross at least one border.

5. Infrastructure managers shall, if justified by market need and the evaluation referred to in paragraph 2 of this Article, jointly define the reserve capacity for international freight trains running on the freight corridors recognising the need for capacity of other types of transport, including passenger transport and keep this reserve available within their final working timetables 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 shall be reserved until the time-limit before its scheduled time as decided by the management board. This time-limit shall not exceed 90 days.

The reserve capacity shall be determined on the basis of the evaluation specified in paragraph 2. Such reserve capacity shall be only made available provided that there is real market need.

6. The management board shall promote coordination of priority rules relating to capacity allocation on the freight corridor.
7. Save in the case of force majeure, a train path allocated to a freight operation under this Article may not be cancelled less than one month before its scheduled time in the working timetable except if the applicant concerned gives its approval for such cancellation. In such a case the infrastructure manager concerned shall make an effort to propose to the applicant a train path of an equivalent quality and reliability which the applicant has the right to accept or refuse. This provision shall be without prejudice to any rights the applicant may have under an agreement as referred to in Article 19(1) of Directive 2001/14/EC.

8. The infrastructure managers of the freight corridor and the advisory group referred to in Article 7(6) shall put in place procedures to ensure optimal coordination of the allocation of capacity between infrastructure managers, both for requests as referred to in Article 12(1) and for requests received by the infrastructure managers concerned. This shall also take account of access to terminals.

9. In paragraphs 4 and 8 of this Article, references to infrastructure managers shall include, where relevant, allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC.

Article 14
Traffic management
1. Infrastructure managers of the freight corridor shall put in place procedures for coordinating traffic management along the freight corridor and may put in place procedures for coordinating traffic management along several freight corridors.

2. The infrastructure managers of the freight corridor and the advisory group referred to in Article 7(6) shall put in place procedures to ensure optimal coordination between the operation of the railway infrastructure and the terminals.

Article 15
Traffic management in the event of disturbance
1. 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.

2. Each infrastructure manager concerned shall draw up priority rules for the management between the different types of traffic in the part of the freight corridors within the responsibility of that infrastructure manager in accordance with the common targets and/or guidelines referred to in paragraph 1 of this Article. Those priority rules shall be published in the network statement referred to in Article 3 of Directive 2001/14/EC.

3. The principles for establishing the priority rules shall at least provide that the train path referred to in Article 13(3) and (5) allocated to freight trains which comply with their scheduled time in the working timetable shall not be modified, as far as possible. 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. For this purpose, infrastructure managers may coordinate the management between the different types of traffic along several freight corridors.

Article 16
Information on the conditions of use of the freight corridor
The management board shall draw up, regularly update and publish a document containing:

(a) all the information contained in the network statement for national networks regarding the freight corridor, drawn up in accordance with the procedure set out in Article 3 of Directive 2001/14/EC;

(b) the list and characteristics of terminals, in particular information concerning the conditions and methods of accessing the terminals;

(c) the information concerning the procedures referred to in Articles 13(8) and 14(2); and

(d) the implementation plan.

Article 17
Quality of service in the freight corridor
1. Infrastructure managers of the freight corridor shall promote compatibility between the performance schemes referred to in Article 11 of Directive 2001/14/EC.

2. The management board shall monitor the performance of rail freight services in the freight corridor and publish the results of this monitoring once a year.

3. The management board shall organise a satisfaction survey of the users of the freight corridor and shall publish the results of it once a year.

Article 18
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 under Article 30(2) of that Directive. They shall exchange the necessary information obtained from infrastructure managers and other relevant parties.
2. 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.

3. The regulatory bodies consulted under paragraph 2 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 2.

4. 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.

5. 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 2 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 2 of this Article.

CHAPTER V

FINAL PROVISIONS

Article 19

Committee procedure

1. The Commission shall be assisted by the Committee referred to in Article 11a of Directive 91/440/EEC.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 20

Exercise of the delegation

1. The power to adopt the delegated acts referred to in Article 4(8) shall be conferred on the Commission for a period of five years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest six months before the end of the five year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 21.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 21 and 22.

Article 21

Revocation of the delegation

1. The delegation of power referred to in Article 20 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other institution and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 22

Objections to delegated acts

1. The European Parliament or the Council may object to the delegated act within a period of three months from the date of notification.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated therein.

3. If the European Parliament or the Council objects to the delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.
Article 23

Monitoring implementation

Every two years from the time of the establishment of a freight corridor, the executive board referred to in Article 7(1) shall present to the Commission the results of the implementation plan for that corridor. The Commission shall analyse those results and notify the Committee referred to in Article 19 of its analysis.

Article 24

Report

The Commission shall periodically examine the application of this Regulation. It shall submit a report to the European Parliament and the Council, for the first time by … (*), and every three years thereafter.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …

For the European Parliament

The President

…

For the Council

The President

…

(*) Five years after entry into force of this Regulation.
### ANNEX I

**List of principal routes of freight corridors**

<table>
<thead>
<tr>
<th>Member States</th>
<th>Principal routes (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. BE, NL, DE, IT</td>
<td>Zeebrugge-Antwerp/Rotterdam-Duisburg-[Basel]-Milan-Genova</td>
</tr>
<tr>
<td>2. NL, BE, LU, FR</td>
<td>Rotterdam-Antwerpen-Luxemburg-Metz-Dijon-Lyon/[Basel]</td>
</tr>
<tr>
<td>3. SE, DK, DE, AT, IT</td>
<td>Stockholm-Malmö-Copenhagen-Hamburg-Innsbruck-Verona-Palermo</td>
</tr>
<tr>
<td></td>
<td>Sines-Elvas/Algeciras</td>
</tr>
<tr>
<td>5. PL, CZ, SK, AT, IT, SI</td>
<td>Gdynia-Katowice-Ostrava/Zilina-Vienna-Trieste/Koper</td>
</tr>
<tr>
<td>7. CZ, AT, SK, HU, RO, BG, EL</td>
<td>Prague-Vienna/Bratislava-Budapest - Bucharest-Constanta</td>
</tr>
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<td></td>
<td>- Vidin-Sofia-Thessaloniki-Athens</td>
</tr>
<tr>
<td>8. DE, NL, BE, PL, LT</td>
<td>Bremerhaven/Rotterdam/Antwerp-Aachen/Berlin-Warsaw-Terespol (Poland-Belarus border)/Kaunas</td>
</tr>
<tr>
<td>9. CZ, SK</td>
<td>Prague-Horni Lídeč-Žilina-Košice-Cierna nad Tisou- (Slovakia-Ukraine border)</td>
</tr>
</tbody>
</table>

(1) ‘/’ means alternative routes.
ANNEX II

The criteria to take into account as set out in Articles 4 and 5

(a) The consistency of the freight corridor with the TEN-T, the ERTMS corridors and/or the corridors defined by RNE;

(b) The integration of TEN-T priority projects (1) into the freight corridor;

(c) The crossing by the freight corridor of the territory of at least three Member States, or of two Member States if the distance between the railway terminals served by the freight corridor is greater than 500 km;

(d) The interest of the applicants in the freight corridor;

(e) The balance between the socio-economic costs and benefits stemming from the establishment of the freight corridor;

(f) The consistency of all of the freight corridors proposed by the Member States in order to set up a European rail network for competitive freight;

(g) The existence of good interconnections with other modes of transport, in particular due to an adequate network of terminals, including in the maritime and inland ports;

(h) If appropriate, better interconnections between Member States and neighbouring third countries

STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION


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 Committee (1) and the Committee of Regions (2).

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.

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.

(2) (not yet published in the Official Journal).
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 trains paths, in the case these paths are located in Member States where national law accepts those requests.
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.