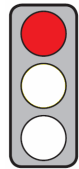


MAIN ISSUES

Objective of the Regulation: With the creation of freight corridors the Commission intends to increase the competitiveness of rail transport over other modes of transport.

Groups Affected: Infrastructure managers, railway and logistics undertakings.



Pros: –

Cons: (1) The control of freight transport via quality and capacity objectives in corridors as well as via investment plans is incompatible with the principles of a market economy.

(2) The introduction of rigid priority rules in favour of certain types of freight transport will lead to considerable disruptions to the overall rail system.

(3) Freight corridors will lead to avoidance reactions by rail passengers towards other modes of transport.

CONTENT

Title

Proposal COM (2008) 852 dated 11th December 2008 for a **Regulation** of the European Parliament and of the Council **concerning a European rail network for competitive freight**

Abstract

► Object and scope of the proposal for a Regulation

- The Commission intends to establish a European rail network which comprises a number of so-called "freight corridors". For this purpose, the Member States shall be obligated to designate international freight corridors (Art. 1 (1)).
- The Commission wants to do this in order to substantially improve the competitiveness of rail transport over other modes of transport (recital 3).
- A "freight corridor" is the total of rail networks operated on the territory of at least two Member states, which
 - link "strategic terminals",
 - include a principal axis, alternative routes and paths linking them, and other railway infrastructure, and
 - allow international and national rail freight services to be operated on the territory of at least two Member States. (Art. 2 (2) lit. a and Art. 3. (1))
- "Terminals" are installations along the freight corridor, which have been set up to allow either the loading and/or the unloading of goods onto/from freight trains, and the integration of rail freight services with other modes of transport (Art. 2 (2) lit. d.)
- Parts of the rail network of third countries may also be included in the freight corridors (Art. 2 (5)).

► Allocation of train paths in freight corridors

- Companies wishing to reserve a freight corridor for a certain time period ("train path") may apply for allocation (Art. 10 (2)).
- A "one-stop shop" will be put in place for each freight corridor (Art. 10 (1)).
- The rail network operators shall keep a reserve of capacity to allow them to respond quickly to ad-hoc requests for allocation of a train path and to guarantee "adequate" transport time (Art. 12 (2)).

► Priority of freight traffic

- Standard categories of freight traffic shall be defined for each freight corridor. At least one of these categories shall be "priority freight", for which "efficient" transport time and punctuality must be guaranteed (Art. 11 (1)).
- Before defining the annual working timetable, the infrastructure managers shall reserve capacities for priority freight based on freight traffic and market surveys (Art. 12 (1)).
- Priority freight shall be given priority over all other modes of transport on the freight corridors. This means:
 - 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 approval for such cancellation (Art. 12 (5)).
 - Even if traffic disruptions lead to conflict with other participants, a rail path reserved for priority freight must be kept clear, if the applicant does not give approval for a transfer or change of the rail path (Art. 14 (1) and (2)).

► Selection of freight corridors

- At the latest one year after the entry into force of this Regulation, each Member State which has at least two land borders with other Member States must submit at least one proposal for a freight corridor to the Commission (Art. 3 (3) lit. a).
- Three years after the entry into force of this Regulation, each Member State must allow at least one freight corridor. If the annual performance of rail freight in the Member State concerned is greater than 30 billion tonne-kilometres, the Member State must allow at least two freight corridors, if the annual performance of rail freight in the Member State concerned is greater than 70 billion tonne-kilometres, the Member State must allow at least three freight corridors. (Art. 3 (3) lit. b)
- The Commission shall examine the proposals for the creation of freight corridors submitted by the Member States and shall adopt a decision relating to an initial network of freight corridors at the latest one year after the entry into force of this Regulation. The network of freight corridors shall be progressively modified and supplemented. (Art. 3 (4) and (6))
- The preconditions for the selection of rail networks as freight corridors are, in particular, that
 - they are part of the trans-European transport network (TEN-T),
 - they generally cross the territory of at least three Member States,
 - their combination as a freight corridor is economically feasible and of “socio-economic” benefit,
 - they are compatible with other designated freight corridors, and
 - have good interconnections with other modes of transport (Art. 3 (2) and Annex).

► Governance of freight corridors

- For each freight corridor the infrastructure managers of the rail networks concerned shall create a legal entity to function as a “governance body” (Art. 4 (2)).
- The governance body shall set up and monitor implementation plans for the creation and improvement of the freight corridors. The implementation plans shall consist of, in particular:
 - Objectives, technical decisions and schedules for “work on the rail infrastructure”,
 - “Performance targets” for service quality and capacity,
 - the main parts of a market survey to be carried out at least once a year, which examines the actual and the expected development of traffic, and
 - the key results of a separate “socio-economic analysis” on the impact of freight corridors and other “parts of the transport system”, as well as the related “external costs”. (Art. 4 (2) in combination with Art. 5)
- In addition, the governance body shall set up an investment plan for at least 10 years for the corridor’s infrastructure, which must be regularly updated. This plan contains
 - projects planned for infrastructure extension and renewal, including the relevant financial requirements,
 - a strategy for an increase in the capacity of freight trains which may run in the freight corridor, in particular concerning the admissible length, gauge or axle load, and
 - a strategy for the deployment of interoperable systems for linking different types of traffic in harmony with national and European plans for such systems. (Art. 7)
- The governance body shall publish all national conditions of use of the rail network relevant for freight traffic and a list of “strategic terminals” (Art. 15).

Changes Compared to the Status Quo

- To date, there are no international rail corridors in Europe which give priority to freight traffic. The Commission intends to change this.
- To date, proposals for the allocation of train paths could only be filed by railway undertakings and groups of railway undertakings (Art. 16 (1) of Regulation 2001/14/EC). This limitation shall be eliminated.
- To date, infrastructure managers had to undertake an evaluation of the need to reserve capacity “where necessary” in order to be able to respond rapidly to foreseeable ad hoc requests for the allocation of train paths (Art. 23 (2) of Regulation 2001/14/EC). They are now obliged to reserve capacity.

Statement on Subsidiarity

The Commission believes that international railway infrastructure management cannot be implemented by the Member States alone.

Political Background

Rail freight services in the EU have been opened up to competition since 1st January 2007. The legal framework, which was created by three EU legal packages in 2001, 2004 and 2007 respectively, contains in particular rules on access to infrastructure, transport and capacity management and the promotion of interoperability. Further measures for the coordination of international routes are the programme for the Trans-European transport network (TEN-T) and the development of the European Rail Traffic Management System (ERTMS). The latter is to replace the currently more than twenty different rail traffic management systems in the Member States and

to better coordinate rail services through the use of radio technology. However, this system is so far only used on a few routes within the EU. Railway infrastructure managers cooperate to manage capacity within the voluntary body RailNetEurope.

The Commission is nevertheless dissatisfied with the development of freight rail transport so far. It attributes the low growth rates in freight rail transport to the prioritisation of passenger transport by capacity management, the poor coordination between national infrastructure managements, and inefficient or insufficient links between railway and other modes of transport.

Status of Legislation

11.12.08 Adoption by Commission

Open Adoption by European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Energy and Transport
Committees of the European Parliament:	Transport and Tourism (leading), rapporteur Petr Duchoň (Group of the PPE-ED; CZ)
Committees of the German Bundestag:	Committee for Transport, Construction and Urban Development (leading); Committee for Industry and Technology
Decision Mode in the Council:	Qualified majority (rejection at 91 of 345 votes; Germany: 29 votes)

Formalities

Legal basis:	Art 71 (1) lit. a and d, EC Treaty (Transport Policy)
Form of legislative competence:	Partly exclusive, partly concurrent procedure: Art. 251 EC Treaty (Codecision)

ASSESSMENT

Economic Impact

Ordoliberal Assessment

The European rail infrastructure is generally used by both passenger and freight trains (so-called mixed operation). Depending on capacity utilisation this leads to competition for the use of the infrastructure. **Flexible fees for train paths would be the most suitable instrument to communicate constraints and to ensure the utilisation of the most urgent use from an economic point of view.** However, the price mechanism has been distorted by public subsidies of passenger transport in many Member States.

The problem of constraints could be alleviated by an expansion of train path capacities. In this way, the European Rail Traffic Management System (ERTMS) could contribute to exploiting reserves in the existing infrastructure. It allows the adaptation of the speed of trains to the current traffic situation and to optimise traffic flow via radio signals. This allows trains to travel at shorter intervals. The construction of new infrastructure, possibly for freight transport exclusively, is also conceivable. The Dutch Betuweline, which goes from Rotterdam to the German border, is such a route.

The Commission's proposal to solve the problem of constraints with freight corridors, which give general priority to certain types of freight traffic, is the wrong regulatory policy: The duty of infrastructure managers to long-term reservation of train paths for freight traffic and even to reservation of capacities for short-term freight transport (so-called non-scheduled traffic) reduces the number of train paths available to passenger rail transport. The consequence will be higher route fees in freight corridors and thus higher prices in passenger transport and/or a lower frequency of passenger trains.

The planned rigid priority regulation in favour of freight transport would make a decentralised modification impossible even in the case of disruptions. Regional operations control centres would no longer be able to keep complete network disruptions to a minimum by making individual decisions. This **would lead to unnecessary delays in passenger transport.**

All of this would motivate rail passengers to change to other modes of transport such as cars or planes. The proposed Regulation may achieve **the objective of diverting more traffic to the railway** in freight transport, however, this effect **would be counteracted by avoidance reactions in passenger transport.**

Impact on Efficiency and Individual Freedom of Choice

It is not conclusive why each freight corridor should require a separate governance body. It is to be welcomed that undertakings only have to contact one institution in order to apply for a route ("one-stop shop"). But such institutions already exist as part of the voluntary cooperation within the RailNetEurope initiative. In addition, the planned quality and capacity requirements as well as the requirements on investment plans place unnecessary constraints on the scope for action of infrastructure managers. Even though they will also use long-term forecasts as a basis of their planning, they should not be forced to prepare "at least" ten year

investment plans within a governance body and to adapt these every year. Infrastructure managers generally have a vested interest in managing their networks as efficiently and profitably as possible. A positive point is the fact that undertakings which are not railway undertakings may also apply for train paths. This will increase competition and thus freight transport efficiency.

Impact on Growth and Employment

The possible positive effects of a reduction of transport costs in freight rail transport will be counteracted by higher (congestion) costs due to avoidance reactions amongst rail passengers.

Impact on Europe as a Business Location

Priority freight rail transport would reduce freight transport costs. Provided that only these are relevant for decisions taken by companies, it will improve the attractiveness of Europe as a Business Location.

Legal Assessment

Legal Competence

The EU has the competence to pass rules for international transport and “other relevant provisions” for the implementation of a common transport policy (Art. 71 (1) lit. a and d). Rules for international transport concerning the distribution of capacities in freight corridors are subject to the exclusive competence of the EU. In addition to the EU, the Member States must also be allowed to pass other relevant regulations concerning the coordination of transport route planning and the utilisation of railways because otherwise the Member States would lose all competence in the transport sector.

Subsidiarity

Regulations for international freight corridors should be laid down at European level.

Proportionality

The proposed Regulation is disproportionate. Fixed priority rules for a priority of freight transport will bring about considerable disruptions of rail transport in general. There are less severe ways of increasing the competitiveness of freight rail transport. Existing measures for the coordination of international rail transport could be intensified to start with.

Obliging infrastructure managers to follow quality, capacity and investment plans made by a governance body is an unjustified interference in their entrepreneurial independence, which will not lead to improved competitiveness of freight rail transport.

Compatibility with EU Law

Unproblematic

Compatibility with German Law

Priority rules of the type provided by the proposed Regulation do not currently exist in Germany. The decision on the utilisation of rail infrastructure must be free from discrimination (§ 14 (1) General German Railway Law, AEG). In the case of conflicting applications for the allocation of train paths, international transport is given priority, followed by sequenced traffic and then freight traffic (§ 9 (4) Railway Infrastructure Use Regulation, EIBV).

If several suitable railroutes are available the preference of certain transport services is admissible (§ 19 EIBV). The foreseeable railroad capacity must be reserved for ad hoc requests (§ 14 (4) EIBV). All undertakings using rail services for the transport of freight may apply for routes (§ 14 (2) No. 2 AEG in connection with § 6 (1) EIBV)

Alternative Policy Options

The preservation of the status quo is to be preferred to the obligation to create bureaucratically managed freight corridors. It may make sense to intensify efforts for a competitive allocation of train paths and optimum transport planning covering the entire network.

Possible Future EU Options

Not foreseeable.

Conclusion

The Regulation should not be approved. The control of freight transport via quality and capacity objectives in corridors and via investment plans is not compatible with the principles of a market economy. The obligation to reserve train paths for priority freight transport will reduce train paths for passenger transport. Rigid priority rules in favour of freight transport will lead to considerable disruptions to the overall system. Avoidance reactions by passengers are to be expected.