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APPENDIX 1

Governance of a Rail Freight Corridor

Handbook on the Regulation concerning a
European Rail Network for Competitive Freight

(Regulation EC 913/2010)

Preliminary IMPLEMENTATION PLAN

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3. Governance Of A Rail Freight Corridor

3.1 Governance structure

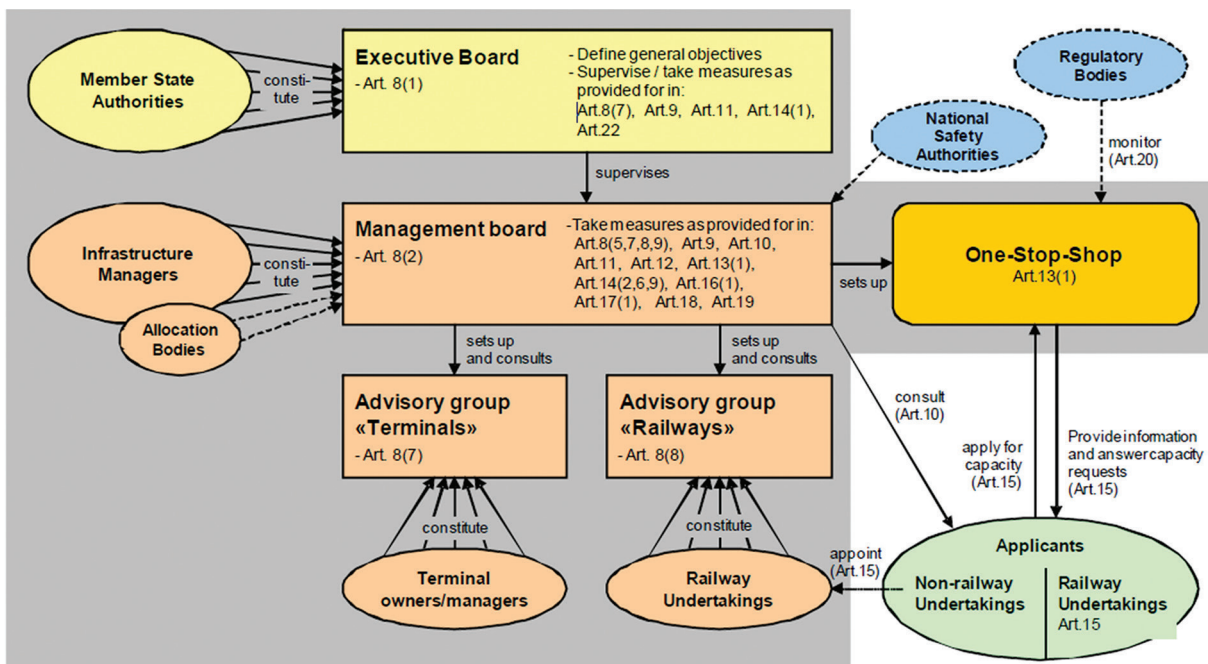


Figure 3.1: Governance structure of a Rail Freight Corridor

The Regulation establishes a governance structure involving all parties concerned in various bodies. Roles and powers given to these bodies in accordance with the Regulation respect the prerogatives of each party as set down in the market access rules contained in the First Railway package, including the principles of managerial autonomy of an Infrastructure Manager, of separation between infrastructure management and transport operation and of independence of regulatory bodies.

Terminal and railway Advisory Groups should take into account any potential conflict of interest in the way they are organised.

3.2 Setting-up the Executive Board

The Executive Board is composed of representatives of Member States. Its setting-up is one of the first steps in the implementation of the Regulation to be carried out as soon as possible in order to define the internal rules and to prepare and start the work. In some corridors, the Executive Board has already prepared a mission statement for the Management Board and requested an action plan and/or a 'reporting table of the actions'.

The Executive Board should formalise its working rules (meetings, etc.). It should designate a chair Member State (for a specific period) to coordinate its activities. The Executive Board should prepare his working arrangements and a mission statement for the Management Board, which also should be sent to DG MOVE. An official endorsement by the Transport Ministers would facilitate commitments in relation to objectives and tasks.

In order to avoid duplication of bodies or of tasks, the Executive Board should in principle be based on the existing structures of the Executive Boards of the ERTMS corridors; their existing organisational structure and scope of tasks should be adapted and extended to meet the requirements of the Regulation. As an example, the chair of existing ERTMS-corridors is usually the director in charge of land or rail transport matters in the competent ministry. One of his/her collaborators is the secretary of the Executive Board. The meetings (4 to 6 per year) may take place alternatively in the different Member States of the corridor.

The existing intergovernmental projects dealing on the corridor, for example involving crossborder issues, should be taken into account by the Executive Board, and where necessary by the Management Board.

Representatives of the Management Board should be invited by the Executive Board to attend meetings (or parts of the meetings) of the Executive Board and report on a regular basis on the progress made in implementing the corridor and examine on-going issues of relevance for the Executive Board.

The main tasks of the Executive Board are (Art. 8(1)):

- ▶ the definition of the general objectives of the freight corridor (Art. 8(1)), and their supervision
- ▶ the approval of the designated lines and terminals of the corridor - taking the appropriate measures for:
- ▶ providing opinion in case of disagreement between the Management Board and the advisory board of terminals (Art. 8(7))

- ▶ the approval of the Implementation Plan (Art. 9(1)) and the investment plan (Art. 11)
- ▶ the definition of the framework for the allocation of capacity (Art.14(1))
- ▶ the presentation to the Commission of the progress report (Art.22)

The Executive Board could, in cooperation with the Management Board and the Advisory Groups, set up procedures to facilitate the resolution of complaints not subject to a treatment by the Regulatory Bodies.

3.3 Setting-up the Management Board

The Infrastructure Managers and where relevant Allocation Bodies have to establish a Management Board. Railway undertakings shall not be members of the Management Board (Art.8(2,6)).

Concerning the participation of Allocation Bodies, it may be suitable to involve them mainly in issues related to the allocation of capacities.

The main tasks of the Management Board are:

- ▶ proposing the lines and terminals to be designated to the corridor
- ▶ establishing its structure (Art 8(5)) and defining all internal work procedures
- ▶ setting up an Advisory Group of terminals owners and managers (Art 8(7))
- ▶ setting up an Advisory Group of railway undertakings and taking into account its opinions (Art 8(8))
- ▶ the coordination of the use of IT tools for paths requests and traffic management (Art 8(9))
- ▶ drawing up and periodical review of the Implementation Plan and the Transport Market Study (Art 9(1-3))
- ▶ cooperation as appropriate with regional and/or local administrations (Art 9(5))
- ▶ consultation of applicants (Art 10)
- ▶ drawing up the Investment Plan (Art 11)
- ▶ coordination and publication of works (Art 12)
- ▶ setting up or designating the One Stop Shop (Art(13(1))
- ▶ assessment evaluation of the necessary capacity (Art 14(6))
- ▶ promotion of coordination of priority rules concerning the allocation of capacities (Art 14(6))

- ▶ procedures to ensure optimal coordination of the allocation of capacity between

Infrastructure Managers and terminals (Art 14(9))

- ▶ procedures for coordinating traffic management (Art 16(1))
- ▶ adoption of common targets for punctuality (Art 17(1))
- ▶ adoption of guidelines for traffic management in case of disturbances (Art 17(1))
- ▶ publication of a 'Corridor Document' (Art 18)
- ▶ promotion of compatibility between the performance schemes (Art(19))

3.3.1 Internal rules and procedures

The Management Board is an operational body. Even if its structure and internal rules are not officially defined and agreed, the Management Board has to prepare its organisation and start immediately its missions.

Structure

The Management Board should be made up of adequate management representatives having decision-making powers responsible for implementation of the corridor within their organisation.

The Management Board should designate a chair Infrastructure Manager (for a specific period) to coordinate its activities. It should formalise its working rules.

The Management Board can appoint a permanent organisation to support the implementation of the corridor. It is suggested that this permanent organisation is staffed of full-time dedicated people (optimally at a central office, ie located at one place; alternatively working within their Infrastructure Manager's offices). For example, corridors 1 and 2 foresee four permanent people in 2011.

It sets up working groups with expert members of the respective Infrastructure Managers to deliver the required measures. In the existing ERTMS corridors there are among others working groups on ERTMS deployment, Operations, Capacity, Traffic Quality, Terminals, and Investments (see organigrammes from ERTMS-corridors A and C below). The roles and duties of the existing

working groups could be expanded to accommodate the requirements foreseen in this regulation. New working groups can be established if needed. These working groups could welcome the view of the users, where relevant, notably those that are not directly represented in the Advisory Groups. Each Infrastructure Manager should manage at least one working group, if possible.

Meetings between the CEOs of the Infrastructure Managers may take place to support the tasks of the Working Groups and Management Board members.

Similarly financial arrangements for the functioning of the corridor organisation (offices, staff, etc.) appear necessary to be defined. Several options for the financing are possible and already used: in proportion to the length of its lines in the corridor; or shared in equal parts between the Infrastructure Managers.

Existing ERTMS corridors

Where a governance structure exists for the ERTMS-corridors, the existing Management Board should be the basis of the Management Board of the Rail Freight Corridors, extending or adapting its tasks and its structure, as appropriate, to comply with the Regulation and to avoid duplication of bodies or of tasks. Existing ERTMS Management Boards should do an inventory of the existing and new tasks foreseen by the Regulation, proposing the appropriate structure (working groups -existing or new ones-) and a timetable for the implementation of the Regulation. In other cases the governance structure defined for the rail freight regulation shall be established directly; the existing working groups should be included in this organisation.

Independent legal entity - European Economic Interest group (EEIG) (Art. 8(5))

An independent legal entity, which can be an EEIG, is suggested by the Regulation. The Management Board of ERTMS-corridors A, C and D is already an EEIG.

The existing EEIGs should continue and extend their missions and their membership, when necessary, if the Rail Freight Corridor involves countries not involved in the ERTMS corridor. Their mandate should be extended. All Infrastructure Managers of a corridor should be members of the EEIG. The benefits of an EEIG appear to be higher than its costs.

In some Member States, the paths are allocated by an Allocation Body instead of the Infrastructure Manager. The role of the Allocation Bodies within

the Management Board should be defined.

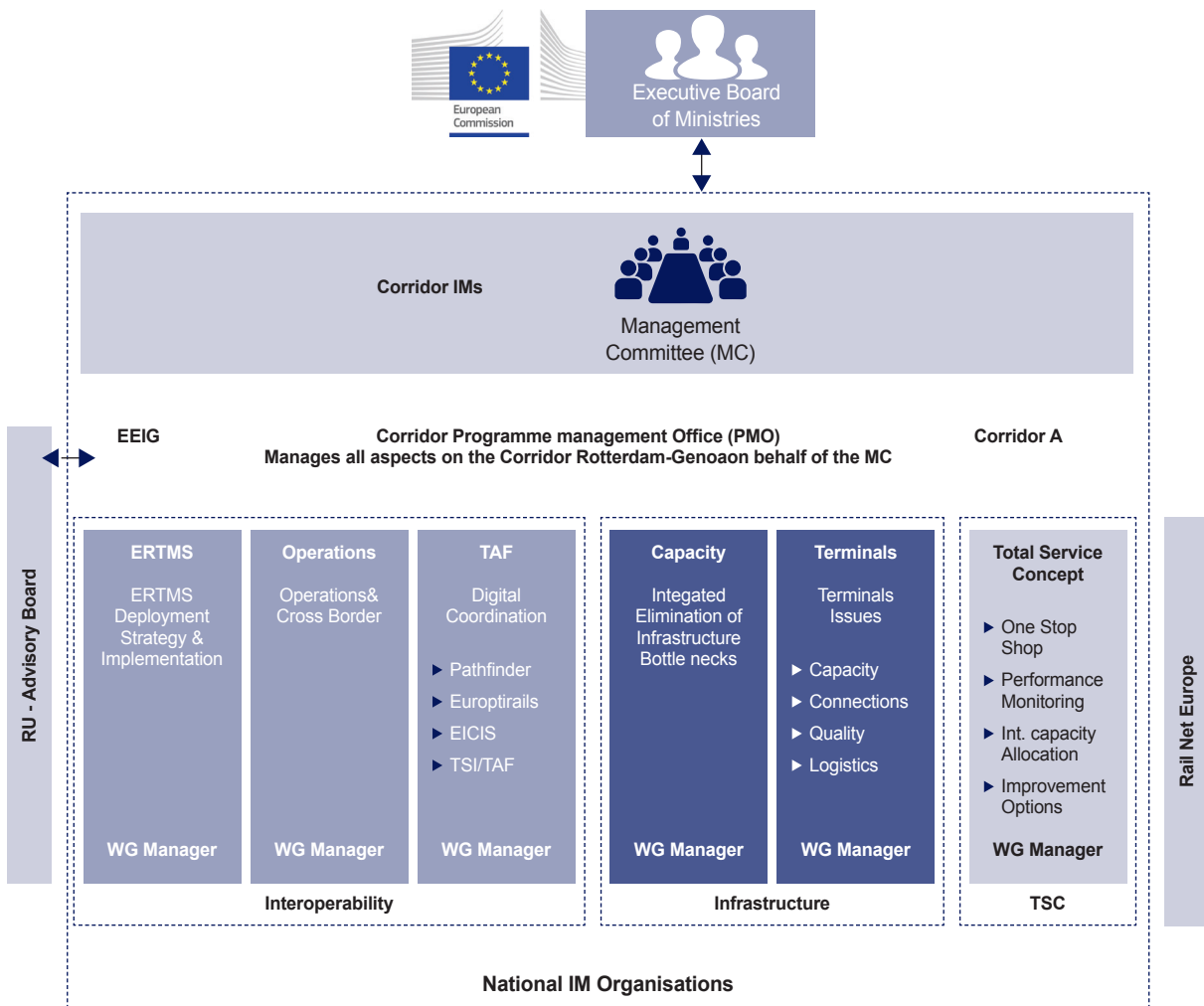


Fig. 3.2: Organigramme of ERTMS-corridor A

* ASSEMBLY (IM's + AB's) = single decision level of EEIG

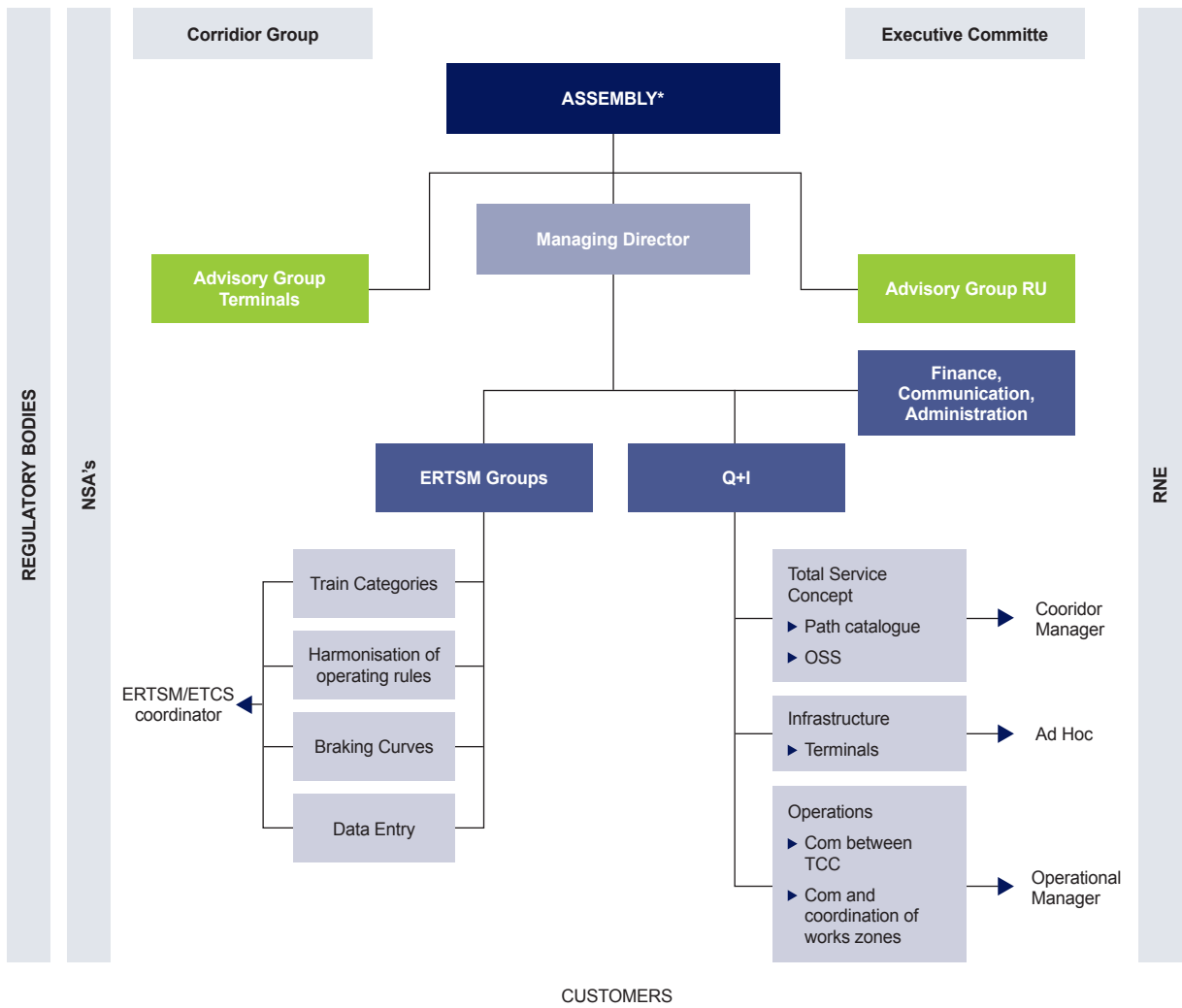


Fig. 3.3: Organigramme of ERTMS-corridor C

3.4 Advisory Groups

3.4.1 Advisory Group of railway undertakings

The Management Board has to set up an Advisory Group to represent railway undertakings using or interested in using the corridor (Art 8(8)).

A separate Advisory Group of Authorised Applicants may also be set up. The widest possible representation of applicants, both railway undertakings and others should be supported.

In view to issue an opinion on any proposal by the Management Board which has consequences for the railway undertakings, the Advisory Group should be set up during the second halfyear 2011 at the latest. This seems necessary for the preparation of the Implementation Plan (to be finalised at the latest on 10 May 2013), for which applicants likely to use the corridor have to be consulted before its presentation to the Executive Board (May 2013).

The Management Board is responsible for the organisational and logistic support of this Advisory Group (secretariat, organisation of meetings, internal rules and procedures), including its financing. Participation in the Advisory Group of railway undertakings is on a voluntary basis. Members of the Advisory Group of railway undertakings will not be reimbursed by the corridor organisation for their expenses.

The Management Board shall introduce consultation mechanisms of the applicants likely to use the corridor. They shall be consulted before the Implementation Plan is submitted to the Executive Board. (Art 10).

The Group has to be informed on any proposal of the Management Board which has consequences for these undertakings. To improve transparency and facilitate the consultation process and the issue of opinions, the Management Board could inform the Advisory Board of the agenda and the minutes of its meetings. All railway undertakings have to be informed about the setting-up of this group.

Since any railway undertaking can claim to be interested in the use of the corridor, the number of possible participating railway undertakings in the Advisory Group could be too high. Railway undertakings of different sizes and with different business models should be represented. Groupings or organisations representing them could also be members of the Advisory Group. New membership should always be possible and the composition of the Advisory Group should be revised from time to time to allow an adjustment of the representation. A group of affiliated companies could be represented by one member.

The Advisory Group could work either on the basis of mutual consent or on the basis of majority decisions. It may also express positions reflecting both opinions. All participants should have the same weight of opinions.

3.4.2 Advisory Group of terminals owners/managers

The Management Board has to set up an Advisory Group group made up of managers and owners of the terminals of the freight corridors (Art.8(7)). Terminals could be represented by both the owner or the manager, while the owner should primarily be involved with regard to issues related to investments.

Where a party believes that it is unfairly treated, discriminated against, or aggrieved, the matter can be referred to the relevant regulatory body.

The Management Board is responsible for the organisational and logistic support of this Advisory Group (secretariat, organisation of meetings, internal rules and procedures).

Participation in the Advisory Group of terminals owners/managers is on a voluntary basis. Members of the Advisory Group of terminals owners/managers will not be reimbursed by the corridor organisation for their expenses.

An exchange (and also a manual) of best practices within a corridor could be very useful and might improve the performance of the corridors and the terminals. The Advisory Group should cooperate in the preparation of the information concerning terminals which has to be published by the OSS in so far the terminals deliver the information needed.

There can be no conflict of interests between managing or owning the terminal and any railway activities.

All terminals owners/managers have to be informed on the setting-up of the Advisory Group and of the possibility to participate to it.

Since any terminal owner/manager can claim to be interested in the use of the corridor, the number of possible participating terminals in the Advisory Group could be too high.

Terminals of different sizes and with different business models should be represented. Groupings or organisations representing them could also be members of the Advisory Group. New membership is always possible and composition of the Advisory Group should be revised from time to time to allow a new representation. A group of affiliated companies could be represented by one member.

The Advisory Group could work on the basis of mutual consent, either at the majority. It may also express positions reflecting both opinions. All participants should have the same weight of opinions

The Advisory Group has to be informed on any proposal of the Management Board which has consequences for the terminals. To improve transparency and facilitate the consultation process and the issue of opinions, the Management Board could inform the advisory board of the agenda and the minutes of its meetings.

Terminals defined into the corridor should be defined end 2011 at the latest, as they constitute the corridor backbone.

In view to issue an opinion on any proposal by the Management Board which has direct consequences for investment and the management of the terminals (Art. 8(7)), the Advisory Group should be set up during the second half-year 2011 at the latest. This seems necessary for the preparation of the Implementation Plan (to be finalised at the latest on 10 May 2013), which shall take into account the development of terminals to meet the needs of rail freight along the corridor, in particular by acting as intermodal nodes along the freight corridors(Art. 9(4)).