

COOPERATION AGREEMENT
BETWEEN THE REGULATORY BODIES COMPETENT FOR MONITORING
THE COMPETITION IN THE ATLANTIC CORRIDOR

PREAMBLE

Article 57 of the Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area provides that the regulatory bodies established in the member states shall cooperate closely and may establish working arrangements accordingly.

Article 20 of the Regulation No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight provides that the regulatory bodies shall cooperate in monitoring the competition in the rail freight corridors and shall in particular ensure non-discriminatory access to the corridor. Moreover, regulatory bodies shall be the appeal body provided for under Article 56(1) of Directive 2012/34/EU.

The purpose of this agreement is to set up the guidelines for this cooperation as part of a coordinated and efficient approach in order to implement processes that are easily accessible to the market players.

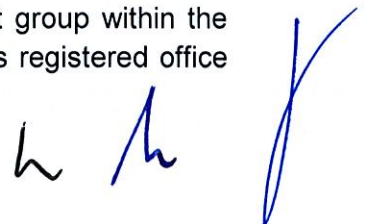
Considering that the ease of contact between the regulatory bodies is an essential condition for the proper functioning of the railway transport market, the parties agree upon the principles which are to govern the cooperation between them so as to ensure that all matters falling within their competences in relation with the Rail Freight Corridor Atlantic are dealt effectively.

The scope of regulation under this agreement is the Atlantic Corridor, formerly named Rail Freight Corridor No. 4, established on the basis of the Regulation 913/2010. The Corridor initially included the existing railway lines and planned itineraries between Sines - Setúbal - Lisbon - Aveiro - Leixões in Portugal, Algeciras - Madrid - Bilbao - Zaragoza in Spain, Bordeaux - La Rochelle - Nantes - Paris - Le Havre and Metz in France, crossing the international borders of Vilar Formoso/Fuentes de Oñoro, Elvas/Badajoz and Irun/Hendaye.

On October the 2nd 2013, an agreement has been signed between the Autorité de Régulation des Activités Ferroviaires (ARAF), the Comité de Regulación Ferroviaria y Aeroportuaria (CRFA) and the Unidade de Regulação Ferroviária (URF).

As the corridor has been extended in January 2016 to Strasbourg (France) and to Mannheim (Germany) via the French/German border in Forbach/Saarbrücken, it is necessary to draw up a new agreement with the regulatory body competent in Germany as a new party.

The Management Board of the Corridor is a European economic interest group within the meaning of Council Regulation (EEC) No 2137/85 of 25 July 1985 with its registered office located in Paris, France.



PARTIES

The signatories of this agreement are the regulatory bodies competent for monitoring the competition in the Corridor under the Regulation 913/2010 and the Directive 2012/34/EU:

- Autoridade da Mobilidade e dos Transportes (AMT) is the regulatory body in Portugal,
- Autorité de Régulation des Activités Ferroviaires et Routières (ARAFER) is the regulatory body in France,
- Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA) is the regulatory body in Germany,
- Comisión Nacional de los Mercados y la Competencia (CNMC) is the regulatory body in Spain.

Article 1

Definitions

RFC Atlantic: Rail Freight Corridor Atlantic


Regulation: Regulation No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight

Directive: Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area

RBs: Regulatory bodies under Article 20 of the Regulation and Article 55 of the Directive competent for monitoring the competition on RFC Atlantic

RespRB: Regulatory body responsible for taking measures regarding the parties concerned under Article 20 (5) of the Regulation

C-OSS: Corridor One-Stop-Shop, as referred to in Article 13 of the Regulation. This C-OSS is located in ADIF offices, the Spanish infrastructure manager, in Spain.



Article 2

Functions of the regulatory bodies

1. Article 20 of the Regulation in conjunction with the Directive provides with the legal basis for the RBs to cooperate in monitoring the competition on the rail freight corridors to avoid discrimination.
2. In accordance with Article 13 (5) in conjunction with Article 20 of the Regulation, RBs are jointly responsible for monitoring competition in the RFC Atlantic by:
 - i. ensuring non-discriminatory access to the RFC Atlantic;
 - ii. ensuring the appeal function as defined by Article 56 of the Directive regarding international freight traffic related to the RFC Atlantic.
3. The jurisdiction of the RBs is territorially defined and framed by the applicable national legislations.

Article 3

Responsibilities

1. As the territorial principle applies, the RBs regulate the activity of the infrastructure managers and other national entities (in particular operators of service facilities) related to the RFC Atlantic in accordance with their national legislation in the framework of the Regulation and of the Directive.

Upon receipt of a complaint or having initiated an own-initiative investigation regarding international rail freight services related to the RFC Atlantic, the concerned RB shall consult the other RBs involved in RFC Atlantic.

2. Without prejudice to the powers and duties of the RBs and in order to guarantee fast decision-making, as the management board for the RFC Atlantic is legally incorporated in France, and owing to the multiple responsibilities for regulating the C-OSS, the RespRB in the event of a complaint or of an own-initiative investigation pertaining to acts of the management board or of the C-OSS, shall be the Autorité de régulation des activités ferroviaires et routières (ARAFER).

Accordingly, ARAFER will be the RespRB to handle a complaint concerning in particular:

- i. decisions taken by the C-OSS with regard to applications for pre-arranged train paths specified in Article 14 (3) and for the reserve capacity specified in Article 14 (5) of the Regulation;
- ii. failure of the C-OSS to provide applicants with the basic information according to Article 13 (2) of the Regulation and to forward infrastructure requests to the competent bodies.

3. For other complaints and own-initiative investigations, the RespRB shall be the regulatory body of the country where the concerned infrastructure manager or the service facilities operator is located, in particular regarding to:

- i. decisions taken under Article 13 (4) of the Regulation;
- ii. decisions related to the allocation of train paths by a national infrastructure manager;
- iii. decisions related to the access to service facilities.

Article 4

Principles of cooperation between the regulatory bodies

1. RBs shall consult each other and exchange all relevant information that they themselves have the right to request under their national legislation. The RBs shall exchange all necessary information before taking any decision. They shall make it available as soon as possible.

2. The exchange of information comprises information concerning both individual complaints (including appeals) and own-initiative investigations by the RBs, pursuant to Article 20 (3), (4) and (5) of the Regulation.

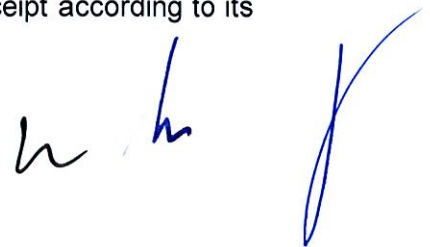
3. As all RBs concerned by a complaint or by an own-initiative investigation must be consulted in the investigation process regarding international rail freight services related to the RFC Atlantic and, if necessary, transfer all relevant information that they have the right to request, in accordance with Articles 20 (3), 20 (4) and 20 (5) of the Regulation, the process of cooperation is set out in Articles 5 and 6.

Article 5

Processes of cooperation

Initial review

1. Any RB on the RFC Atlantic can be solicited by a complainant pursuant to Article 20 of the Regulation and 56 (1) of the Directive regarding international freight traffic related to the RFC Atlantic. Upon receipt of a complaint, the receiving RB acknowledges receipt according to its national legislation.



The RB receiving the complaint conducts a formal review of the complaint and checks whether the information given by the complainant is complete and sufficient to initiate a case. When the information is incomplete or insufficient, the RB receiving the complaint requests the complainant to provide with that information without delay.

The RB receiving the complaint consults the other RBs, transfers them relevant information, and asks them for comments.

2. Within five working days after reception of complete information, RBs shall determine unanimously if the cause of the complaint is related to acts of the management board or of the C-OSS or not in order to determine the RespRB according to Article 3.

When the RB receiving the complaint is not the RespRB, it sends without undue delay information to the RespRB and informs the complainant that it is not competent to handle the complaint and provides him with the contact details of the RespRB.

Without prejudice to paragraph 1 of this article, the RBs shall not accomplish any act, any proceeding or take any measures regarding the parties concerned as long as they do not have designated the RespRB.

The RespRB shall review the complaint according to the procedure set out in section *Full review and decision* below.

3. Whenever a RB decides on its own initiative to start investigations regarding international rail freight services related to the RFC Atlantic in order to correct discrimination against applicants, market distortion and any other undesirable developments relating to RFC Atlantic, it shall inform the other RBs without delay and ask them for comments.

The RBs shall determine unanimously if the cause of the investigation is related to acts of the management board or of the C-OSS or not in order to determine the RespRB according to Article 3.

When the RB having started investigations is not the RespRB, it sends without undue delay all relevant information to the RespRB.

Once the RespRB has been designated, the other RBs shall not accomplish any act, any proceeding or take any measures regarding the parties concerned.

The investigations are carried out according to RB's national legislations.

Full review and decision

4. The proceeding is based on the national legislation of the RespRB in the framework of the Regulation and of the Directive.



5. In case of a complaint, the RespRB sets the deadlines for handling the complaint according to its national rules but, in any case, the final decision is taken within six weeks from receipt of all relevant information.

The RespRB informs in writing the parties concerned that it has received the complaint. Subsequently, it sends to these parties appropriate information, including letter (in the official language of the country where the RespRB is located), and asks for comments on the complaint. Such parties might include railway undertakings, infrastructure managers, the C-OSS, other regulatory bodies or any other stakeholders.

The RespRB reviews all the information and comments received from the complainant and other parties and, if necessary, requests further information.

6. All RBs of RFC Atlantic ensure their cooperation in the investigation of the RespRB by providing all information legally available within their powers. In particular, RBs shall cooperate in order to ensure that the RespRB complies with the deadlines applicable under national law.

7. The RespRB drafts a decision and consults the RBs involved and the parties when required by national legislation. The RBs involved can comment on the proposed decision. The RBs shall provide the RespRB with their comments without delay. The RespRB shall take into account every comment made on the proposed decision by all the RBs before taking a decision.

8. Having consulted the RBs involved, the RespRB decides and informs according to its national legislation the parties concerned, the C-OSS and, where applicable, the infrastructure manager that is involved.

9. The RespRB sends the decision and a summary of the decision in English to the other RBs.

10. The RespRB informs the other RBs whether or not the concerned parties complied with the decision.

11. The decision is subject to judicial review according to the national legislation of the RespRB.

12. The language to be used in the RespRB's procedure is determined in accordance with the applicable national legislation.

Article 6

Formal requirements

The exchange of information between RBs will be in English and by e-mail.

To this end, the RBs shall exchange email contact details and ensure that it is up to date.

Article 7

Entry into force

This agreement comes into force one day following the last signature.

It annuls and supersedes the former agreement signed on October 2nd 2013 between ARAF, CRFA and URF.

Article 8

Review of the agreement

The RBs of the RFC Atlantic agree to review this agreement if at least one of them considers it is necessary.

Article 9

Miscellaneous provisions

The signatory RBs will send this agreement to the Management Board of the RFC Atlantic, to be integrated in the Corridor-Information-Document.

The signatory RBs will publish this agreement on their respective websites.

For Autoridade da Mobilidade e dos Transportes

Mr João Carvalho


13.12.2016

For Autorité de Régulation des Activités Ferroviaires et routières

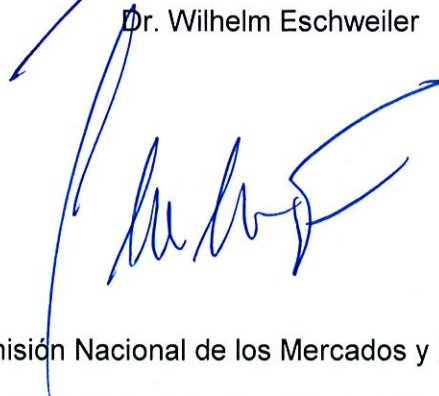
Mr Bernard Roman





For Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

Dr. Wilhelm Eschweiler



For Comisión Nacional de los Mercados y La Competencia

Mr José María Marín Quemada