

## REGULATORY MANUAL METHODOLOGICAL APPROACH WITH FOCUS TO REGIONAL HARMONISATION AND COMPLIANCE WITH EU DIRECTIVES FOR ACCESS TO INFRASTRUCTURE

V. Evmolpidis – T. Jankovic

Team Leader  
Senior RW Expert in RW Infrastructure Access Junior Regional Railway Expert

## REGULATORY MANUAL METHODOLOGICAL APPROACH WITH FOCUS TO REGIONAL HARMONISATION AND COMPLIANCE WITH EU DIRECTIVES

### Contents

1. Introduction, sources of information
2. What is the regulatory manual: purpose and objectives
3. Contents of the regulatory manual
4. What harmonised procedures can be followed at regional and Participant level?
5. Conclusions

### 1. Introduction, sources of information

- Objective of presentation: to suggest the layout of the RM which contributes towards introducing a common infrastructure charging regime, as required in MAP.
- According to the TOR the RM should contain a methodology for the evaluation of the elements for decision making on levels of railway access fees to be charged and an outline of Rail Infrastructure Access Regime
- It should be mentioned that relevant examples for regional implementation are not available. But in the recent BAH project financed by WB for the Serbian Ministry of Infrastructure, one of the deliverables was "Outline Regulatory Manual"

### 1. Introduction, sources of information

- The Consultant reviewed several sources of information such as:
  - BAH report "Outline Regulatory Manual" for MoI, Nov. 2007
  - UK Regulator (ORR) "A guide to Regulatory Framework", "Network Code" and other material
  - ECMT: Railway Reform and Charges for the use of Infrastructure: Chapter 5, the Role of Regulator
  - A letter to EC of 4 Regulators for IQ-C Project (Rotterdam to Milan)

### 2. What is the regulatory manual (RM)

- Purpose of regulatory manual
- Objectives of regulatory manual and contents
- Challenges faced when preparing the regulatory manual

### 2. What is the regulatory manual (RM): purpose and objectives

#### The purpose is:

- To prepare a document that is agreed upon to act as guideline applicable by the Region and the Participants for access to infrastructure with harmonised procedures

#### The objectives are, to include (contents):

- A. an acceptable methodology for access charges calculation and criteria to be used
- B. an acceptable process for capacity allocation
- C. an acceptable process for path allocation
- D. to present the role and responsibilities of the Regulatory Body, as Market Regulator

## 2. What is the regulatory manual (RM): purpose and objectives

The challenges are:

**At market level (what part of market does RM cover?):**

- should the RM have a wider transport policy approach in the Region and Participants?
- should the RM have a railway market approach in the Region and Participants?
- should the RM have an approach addressing the interests of individual railway companies?



RWR/RSA Consultant: WVG – TRADEMCO – VIENNA CONSULT – TRL



## 2. What is the regulatory manual (RM): purpose and objectives

The challenges are (continued):

**At institutional level (are the Institutions to use RM available?):**

- Is there a Regulatory Body in each Participant?
- Is this RB acting as Market Regulator only, or does he have other responsibilities too?
- Is the RB actually independent?
- Is the RB in a position to exercise its functions properly?
- Is the RB sufficiently “manned”?



RWR/RSA Consultant: WVG – TRADEMCO – VIENNA CONSULT – TRL



## 2. What is the regulatory manual (RM): purpose and objectives

The challenges are (continued):

**At policy level (can the RM become a policy instrument for transport?):**

- Are the Ministries of Transport sufficiently committed to support railways as sustainable mode of transport?
- Are the Governments and the Ministries of Finance committed to finance the rehabilitation and development of railway infrastructure for the subsequent development of the railway market
- Are the Governments committed to the development of railway corridors in their territory and in the Region, for integration to European Institutions



RWR/RSA Consultant: WVG – TRADEMCO – VIENNA CONSULT – TRL



## 2. What is the regulatory manual (RM): purpose and objectives

The challenges are (continued):

**At user level (who will use the RM?):**

- Infrastructure Managers, existing or new
- Railway Undertakings, existing or applicants
- Regulatory Bodies as Market Regulators
- Transport Policy and other relevant decision makers



RWR/RSA Consultant: WVG – TRADEMCO – VIENNA CONSULT – TRL



## 3. Contents of the regulatory manual (RM)

**A. Methodology for TAC calculation, criteria to be used**

1. Charging scheme should be based in same principles on different parts of the network for each Participant. This requirement may be expanded to all “core network”
  2. What are these principles? MC, SMC, MC+, FC, FC-
    - In most Participants MC+ being used.
    - EC: FC or FC- should be avoided.
      - Cost of access and level of TAC should be minimised
    - Preferred principle related to Govt's financial support to IM
    - Environmental charges applicable, only if imposed on competing modes too
- ➔ Agreement on “MC+”?



RWR/RSA Consultant: WVG – TRADEMCO – VIENNA CONSULT – TRL



## 3. Contents of the regulatory manual (RM)

3. What costs are to be recovered:

- **Minimum access package:** handling requests for capacity, right to use granted capacity, running on tracks and junctions, train control (telecommand, signaling etc), information required to operate on allocated path
  - **Access to services facilities:** electrical supply equipment, refueling, passenger and freight stations/terminals, marshalling and train formation, sidings, maintenance and technical facilities
  - **Additional services:** traction current, pre-heating of passenger trains, fuel supply and services at service facilities, special service contracts
  - **Ancillary services:** access to telecom network, supplementary information, technical inspection of rolling stock
- ➔ Agreement at first phase (2 years?) to cover of minimum package! Which is what most commonly is used in Participants and other EU MS
- ➔ Main pending issue: should traction current be covered by additional formula?



RWR/RSA Consultant: WVG – TRADEMCO – VIENNA CONSULT – TRL



### 3. Contents of the regulatory manual (RM)

#### 4. Access charging formulae

Three alternatives currently being proposed in planned NS:

Albania and Montenegro:

$$U = (Q_{\text{inf}} \times P_{\text{reg}} + Q_{\text{inf}} \times P_{\text{g}}) \times C_{\text{vkm}} \times K \times F$$

Croatia and Kosovo (under UNSCR1244/99)

$$C_{ij} = T_i \times \Sigma L_{ij} \times C_{vkm} \times K_{ij}$$

Serbia

$$\text{Charge EU cat I} = (\Sigma \text{Train-km} \times \text{TI}) \text{ track} + (\Sigma \text{Gross-tonne-km} \times \text{BI}) \text{ track}$$

All three formulae have as common element the amount of trainkm as function of category of track, the charge per trainkm and some normalisation coefficients that depend on condition of track and timetable.



### 3. Contents of the regulatory manual (RM)

→ Agreement to use at first phase (2 years?) a simple formula based just on trainkm taking into consideration common type and multiplier of coefficients, where the prevailing conditions are similar

→ Agreement to use at second phase a more comprehensive formula that takes into consideration gross tonkm

Simple formulae are easy to apply and easy to understand by RU's and applicant RU's and do not raise confusion.

Simple formulae also address better the common case of lack of sufficient data for the railway infrastructure costs.

Simple formulae are better suited to support initiating access charge applications in an open RW market that has to be developed and supported.



### 3. Contents of the regulatory manual (RM)

**5. Criteria for access charges:** related to calculation of track access costs, to capacity allocation, to path allocation and to market conditions (competition)

#### 5.1 Related to track access costs:

- ✓ infrastructure maintenance
- ✓ signalisation and telecommand
- ✓ energy (traction current) consumption
- ✓ usage of facilities
- ✓ normal or special services offered
- ✓ sidings and technical facilities

Each Participant will have his own respective costs



### 3. Contents of the regulatory manual (RM)

#### 5.2 Related to capacity allocation

- ✓ organisation and regulation of rail transport
- ✓ line category
- ✓ train category
- ✓ train speed
- ✓ time and duration of infrastructure use
- ✓ type of railway vehicles used
- ✓ prioritisation of trains
- ✓ timetable preparation
- ✓ number of railway vehicles used
- ✓ train composition



### 3. Contents of the regulatory manual (RM)

#### 5.3 Related to path allocation

- ✓ length of infrastructure used by train by section of path and its category
- ✓ train mileage for passenger and freight trains
- ✓ train gross kilometers performed
- ✓ direction of transport
- ✓ train composition
- ✓ timetable preparation
- ✓ number of railway vehicles used
- ✓ type of railway vehicles used



### 3. Contents of the regulatory manual (RM)

#### 5.4 Market related (competition)

- ✓ quantity discounts
- ✓ access charges for usage of infrastructure in other sectors, particularly road transport
- ✓ total transport costs in competitive modes, particularly road transport (monitoring of the market)
- In addition to above, the RM should specify the forms for capacity and path allocation as well as the timing that has to be followed by the applicants and the conditions thereof that the applicants has to satisfy. The timing and the conditions should be agreed for harmonisation.



### 3. Contents of the regulatory manual (RM)

- Agreement for the criteria and their categorisation as above
- Agreement for value of parameters representing the criteria in the formulae
- Agreement on what criteria to be used in the first phase (2 years?) and what later on
- Agreement on which network to implement the above agreed procedures (SEETO core network, all principal lines, all regional lines, local lines)
- Agreement to make international/transit train paths and national train paths compatible, with priority to first ones



### 3. Contents of the regulatory manual (RM)

#### B. The role and responsibilities of the Regulatory Body, as Market Regulator

- According to EU Directive 2001/14 and the first RW reform package, the RB acts when it receives appeals concerning non-fair and discriminatory practices concerning:
  - ❖ Network Statement,
  - ❖ criteria in NS,
  - ❖ path allocation process and results,
  - ❖ track access charging scheme,
  - ❖ level or structure of TAC,
  - ❖ safety certificate enforcement and monitoring safety standards and rules



### 3. Contents of the regulatory manual (RM)

- According to RW Reform Package II, the RB will have the power to take action “ex officio”, i.e. with its own power
- Of course RB practice their authorities for the respective Participant
- But EU Directive requires national RB to “exchange information about their work and decision making principles and practices for coordinating their decision making principles across the Community” (Art. 31)
- Also RB “shall have the power to request relevant information from IM, applicants and any 3<sup>rd</sup> party.. in the MS which should be supplied without delay”



### 3. Contents of the regulatory manual (RM)

#### Therefore:

- Reaching agreement on the issues set earlier at regional scale will enable the RB's to perform their activities in the Participants **-but in the Region as well-** in an effective way, in what concerns at least the international and transit trains for passenger and freight transport
- This will influence the operations at least on the Core Network and the EU Corridors and their branches in the Region and will satisfy relevant objective of MAP
- **Formalising the communication and collaboration of RB's in Regional level creates a pioneering situation for RW's in Europe, but not the only one..**



### 3. Contents of the regulatory manual (RM)

#### Example 1

#### Rotterdam-Milan-Genoa railway freight corridor

On Jan 4, 2005 RB's write to EC the following:

- Role of RB crucial to develop competition in RW market and increase modal share of RW's
- EU RB should have common strategies for action on:



- Establish a transnational cooperative network by sharing procedures + practices
- Be proactive for full implementation of liberalisation policies in respective countries with the goal to maximise RW traffic

even if every country's RB has different organisation and countries implement EC Directives in different ways



### 3. Contents of the regulatory manual (RM)

#### Rotterdam-Milan-Genoa railway freight corridor

#### Therefore they proposed:

- > Improving the interface and exchange of information between RU's and IM's
- > Fostering both the exchange of experiences on the corridor and the pro-active co-operation for dealing with the main problems arisen and complaints lodged by RU's or IM's, with objective to encourage further competition on the Corridor
- > Prepare recommendation, proposals, guidelines for optimising the development of traffic and competition within the market at intra- and inter-modal level



### 3. Contents of the regulatory manual (RM)

#### Our challenges in SEETO Region for RB's are

- ❖ Do RB's want the enhancement of the role of RW in the transport market in the Region
- ❖ Do RB's want the enhancement of competition in RW market by actually implementing EU Directives
- ❖ Do RB's recognise that the SEETO Core Network and the EU Corridors constitutes legitimate paths where the role of RW is most critical and has priority due to the volume of international, transit & long distance traffic
- ❖ Can the RB's be proactive in order to collaborate among them and between them and EU MS RB's



### 3. Contents of the regulatory manual (RM)

#### Example 2

#### RAILNET Europe (RNE)

- RNE is set up by 34 European RW IM's to enable fast, easy access to European rail, as well as to increase the quality and efficiency of international rail traffic. The 34 members of RNE are harmonising conditions and procedures in the field of international rail IM for the benefit of the entire sector.
- RNE is the next step from bi- and multi- lateral cooperation between European RW IM towards 1 common organisation with a European focus. The members of RNE are harmonising conditions and introducing corporate approaches to promote the European rail business from the rail IM point of view for the benefit of RW market.
- The main objective of RNE is to improve operational issues in the field of international rail traffic.



### 3. Contents of the regulatory manual (RM)

#### Example 2 RAILNET Europe (RNE) (continued)

- To achieve this, RNE is harmonising the members' medium and long-term planning, common marketing & sales approaches, and operations, and ends with RNE after-sales services, such as monitoring and reporting
- One of the initiatives is the One Stop-Shop (OSS) whereby a RU by contacting the OSS "gate" in his country, receives:
  - support and information on the full product and service range of the IM's in any member
  - all information required to gain access to the infrastructure of any IM participating in RNE
  - his requests for any international train path within RNE are handled and train path is offered for journey
  - His requests for the next timetable period are duly taken into account in the yearly timetabling process



### 3. Contents of the regulatory manual (RM)

#### Example 2 RAILNET Europe (RNE) (continued)

- For this purpose, RNE has prepared several handbooks and guidelines, such as:
  - the handbook for the international timetabling process, Pathfinder Guidelines 2010, Paths Request Forms
  - the new process scheme for international timetabling
  - the harmonised deadlines for international timetabling
- ➔ More information can be found: [www.railneteurope.com](http://www.railneteurope.com)
- ➔ Of SEETO Participants, Croatia is already a member of RAILNET Europe and has assigned an OSS for contacts related to access to network



### 3. Contents of the regulatory manual (RM)

#### Example 3 Proposal for a new EU Regulation (Dec. 2008) for a European rail network for competitive freight

- The proposal is in accordance with the principle of subsidiarity. It contains provisions regarding the transnational management of RW infrastructure which could not be implemented individually by MS. It is also in accordance with the principle of proportionality. It sets objectives and joint procedures for the MS and the RW IM.

The objectives to be served are:

- cooperation between IM in order to eliminate border effects for freight traffic and optimising their investment and the use of their capacities at an international level, **initially on the most important routes;**
- development and management of the intermodal terminals used for the railways;
- establishing quality and reliability of the infrastructure capacities allocated to freight



### 3. Contents of the regulatory manual (RM)

#### Example 3

#### Proposal for a new EU Regulation (continued)

- The legislation lays down a general obligation for the MS to create freight corridors within the TEN-T; the MS define the corridors that they would like to create;

To enable this it is necessary to:

- develop interoperable procedures;
- coordinate and improve traffic operations between IM, and between IM and terminal managers;
- enhance access to infrastructure and terminals;
- provide preferential treatment to freight trains in path allocation and managing traffic;
- international and national train paths should be consistent
- monitor the quality of the service along a freight corridor;
- establish cooperation between RB.



### 3. Contents of the regulatory manual (RM)

#### Example 3

#### Proposal for a new EU Regulation (continued)

- The freight corridor may contain elements of the rail networks of European 3rd countries. These elements must be compatible with the TEN-T policy.
- The governance body shall put in place a one-stop shop for requests for train paths for freight trains crossing at least one border along the freight corridor.
- All requests for train paths for a freight train crossing at least one border or using several networks along the freight corridor must be made to the one-stop shop
- The RB involved, shall ensure that the activities of the one-stop shop are carried out under transparent and non-discriminatory conditions.



### 3. Contents of the regulatory manual (RM)

#### Proposal for a new EU Regulation (continued)

#### Concerning the Regulatory Bodies

- In addition to the requirement of Directive 2001/14 concerning the need to cooperate to supervise the international activities of the infrastructure managers and applicants in the freight corridor, it is foreseen:
- "In the event of a complaint from an applicant regarding international rail freight services, .... the RB shall consult the RB of the MS on the territory of which the freight corridor passes and request the necessary information from them before taking its decision. The other RB shall provide all the information that they themselves have the right to request under their national legislation. Where necessary, the RB receiving the complaint or having initiated the routine enquiry shall transfer the file to the RB responsible in order to take measures regarding the parties concerned"



### 3. Contents of the regulatory manual (RM)

#### C. Content of RM concerning activities of RB

According to EU Directive 2001/14:

- The RB should evaluate appeals by applicants who consider themselves being discriminated by IM or RU concerning: the Network Statement, the criteria in NS, the path allocation process and results, the track access charging scheme, the level or structure of TAC, the safety certificate, enforcement and monitoring safety standards and rules,
- The Regulatory Body decides on complaints and takes action to remedy them in 2 months from receipt
- It can request data from national IM to be provided without delay
- It should exchange information about their work and decision making principles and practices with RB of neighboring countries



### 3. Contents of the regulatory manual (RM)

#### C. Content of RM concerning activities of RB

According to proposed Regulation:

- It can request data from other country's RB's concerning procedures in respective IM's for access to networks
  - It can ask other country's RB to carry out the necessary investigations concerning the appeal that it has received
- But in addition to all above, according to 2<sup>nd</sup> Reform package
- It can now act "ex officio", that is "ex-ante" (before) than "ex-post" (after) a complaint is filed with the RB
- In carrying out his activities, an independent RB should act according to Principles of Good Regulation (UK) which request in his decision making process: proportionality (scale of problem), accountability (to stakeholders and public), consistency (no surprises), transparency (clear reasoning) and targeting (to meet desired end result)



### 3. Contents of the regulatory manual (RM)

#### C. Content of RM concerning activities of RB

#### Concerning the Network Statement:

- Check compliance with RAILNET Europe standard
- Check validity period proper updating of NS
- Check coverage of liabilities
- Check appeals procedure description and enactment of required procedures
- Check that legal regulations required by national or international institution are set
- Check typologies of lines, relevance of traffic restrictions, stations, terminals, facilities
- Check type of services offered and coverage of minimum package and access to services facilities and to traction current



### 3. Contents of the regulatory manual (RM)

#### C. Content of RM concerning activities of RB

#### Concerning access charges:

- Check the criteria for access to network for their relevance and proper application in TAC calculation
- Check access charges calculation methodology
- Request the calculation of railway infrastructure costs and check them, if required
- Check the application of access charges in similar way to all applicants and for all services offered according to NS
- Check for the type and extent of discounts offered and their consistency
- Participate to any negotiations between IM and RU
- Check access contracts, framework agreements and other contracts between IM and RU's



### 3. Contents of the regulatory manual (RM)

#### C. Content of RM concerning activities of RB

##### Concerning allocation process and its results

- Check who is allowed to have access and be operators
- Check the procedure required for safety certification (company, rolling stock-staff acceptance) and the specification of time and conditions of implementation
- Check the body required to license RU's
- Check the path allocation process in and out of timetable, its scheduling and proper implementation to applicants
- Check coverage of liabilities by RU's
- Check operational rules and safety standards and the organisation responsible to publish them
- Check the disputes resolution process



### 3. Contents of the regulatory manual (RM)

#### C. Content of RM concerning activities of RB

##### Concerning other activities:

- Above can be done ex-post or ex-ante of a complaint
- Proactive cooperation with regional RB of other Participants
- Request of assistance of respective RB for the same as above issues and activities of RB
- Seek the support of Commission for international cooperation
- Be present in courts, in case its decision is taken for judicial review
- Able to exercise uncontested enforcement power



### 4. What harmonised procedures can be followed at regional and Participant level?

- The RM will become the main "instrument" to set harmonised procedures along the lines described in EU Directives and the forthcoming EU Regulation for freight rail and to formalise cooperation between RB.
- The main scope is to enhance the role of railways in SEETO Region with emphasis in international transport (including transit), at least at first phase.
- The RM will describe the above, with a regional perspective for all matters for which agreement at regional level should be reached
- But the RM is also useful for organising the RB's responsibilities at Participant level



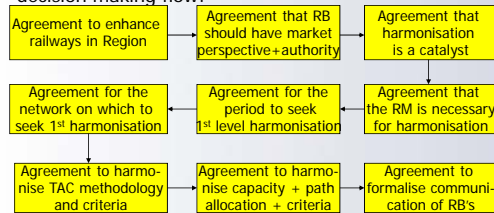
### 4. What harmonised procedures can be followed at regional and Participant level?

- The RM will bring forward the common and not common elements in the decision making process for international train operations in SEETO Region and will set the platform for their harmonisation
- The RB's will create a higher level cooperation level in EU and in the Region, in addition to IM's cooperation
  - But the IM's in the Region still do not talk to each other
  - And the RB's are still not fully formed, or fully operational or not formed at all
- While for IM's there is RNE and other specific previous initiatives of cooperation, no precedence with RB's



### 4. What harmonised procedures can be followed at regional and Participant level?

- The harmonisation of processes requires the following decision making flow:



### 5. Conclusions

- The RB's approached as Market Regulators and based on EU Directives, can have a net positive impact on the development of RW market
- Therefore independent RB's should be set up by priority in each Participant and play the active role foreseen in the Directives, while being properly manned
- The Governments should give priority to RW's and finance them as they do for road transport
- Harmonised procedures are required by the RW market. Approaches like the ones in Rotterdam-Genoa corridor, gave rise to 1<sup>st</sup> level of cooperation of IM, instituting RNE.



## 5. Conclusions

- In view of this, a new EU Regulation for the rail freight, gives priority to freight transport on EU railways and requires RB's to cooperate, in addition to IM's cooperation. Meanwhile the RB's obtain authority that influences neighboring countries.
- SEETO Participants do not have to wait to become members of EU. They can act **NOW!** and set example...
- They need to agree:
  - On Harmonised principles for TAC (MC+?)
  - On phases of implementation of harmonisation for what to charge in TAC: Minimum package + services + traction current?



## 5. Conclusions

- On a simplified TAC formula based in the short term on "trainkm" and some parameters. At a second phase, more comprehensive formula can be used
- On criteria for track access cost, on capacity allocation, on path allocation, on competition
- On the value of parameters expressing the criteria
- On the network on which harmonisation will be firstly implemented (core network?)
- On giving priority to international and transit trains



## 5. Conclusions

- The Regulatory Manual (RM) will formalise the communication and cooperation of RB's at Regional level and is pioneering. But examples strengthening this approach already exist
- The RB's should exercise their authorities with the Principles of Good Regulation (proportionality, accountability, consistency, transparency, targeting)

***The question still to be answered is:***

***"How can we optimise the impact of RB's at Regional Level?"***



**Thank you for your attention!**

