



Directorate-General
for Energy
and Transport



The EU Directives and the Models and Powers of Rail Regulators in Europe

1st Workshop on Rail Transport Regulation
Florence 15 November 2010
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- Models of Regulatory Bodies (RB)
 - RB in the (Transport) Ministry
 - Stand alone RB outside the Ministry
 - RB for several sectors, outside the Ministry
 - Competition authority with powers of Rail RB according to railway directives (NL)
 - RB with additional powers of competition authority in the railway field (UK)

● EU Provisions on Regulatory Body

- Independence
- Appeal function
- Monitoring function
- Power to request information.
- Power to « remedy the situation »
- Judicial review
- International cooperation

- The Independence of the Regulator
(Art. 30(1) of Directive 2001/14)
 - Independence from any infrastructure manager, charging or allocation body or any applicant
 - In terms of organisation, funding decisions, legal structure, and decision making
 - Problem: RB is part of the transport ministry which exerts shareholder rights in incumbent



Proposals of Recast to clarify Independence Issue

- » Single authority independent from any other public authority
- » Cross-sectoral regulator allowed
- » Criteria for recruitment of board members and termination of their mandate
- » No interest in RU or IM three years before and after term as regulator

● Appeal Function (Art. 30(2) of Directive 2001/14)

- Appeals in particular with regard to network statement, allocation process and its result, charging scheme, level or structure of charges which the operator has to pay
- Decision on complaints within a maximum period of two months from receipt of all information
- Appeal function may be attributed to a different body than “regulatory” function

● Monitoring (regulatory) function

- Article 30(1) of 2001/14: RB must have appeal and regulatory functions
- Article 30(3): RB shall ensure that charges comply with chapter II
- Article 10(7) of 91/440: RB according to Art. 30(1) of 2001/14 or any other body shall monitor competition in the rail services markets
- Shall be set up in accordance with 30(1)
- Complaint if « treated unjustly, discriminated or injured in any other way »
- RB may decide upon complaint or on its own initiative on appropriate measures to correct undesirable developments in rail markets

● Power to request Information (Art. 30(4) of Directive 2001/14)

- RB shall have the power to request relevant information from IM, applicant or any third party involved
- Information must be supplied without undue delay
- In view of the monitoring function of the RB, this includes information necessary for market surveys, also statistical information
- To be enforced by sanctions including fines

● Recast on Power to request Information

- Include information on statistical facts necessary for market monitoring
- Right to conduct audits or initiate external audits
- Regulatory accounts must be supplied:
 - » By IMs and integrated companies to allow check of account separation and preventing of cross-subsidies
 - » By IMs to allow control of access charges

- Power to « remedy the Situation » (Art. 30(5) of Directive 2001/14)
 - Decisions must have direct effect on the market
 - No administrative review, only judicial review possible
 - Enforcement with sanctions including fines
 - Recast: Suspension of effect of RB decision only in case of irretrievable damage for applicant

- New Powers for RBs proposed in Recast
 - To control access to rail related services
 - To check account separation issues
 - More detailed check of network statements

- Recast on International Co-operation of RBs
 - Obligation to co-operate in exchanging relevant information
 - RBs must supply all information which they are themselves entitled to request
 - Information to be supplied to the RB taking the decision
 - Associations of IMs must equally provide such information