

courtesy translation

Annex A) to Decision no. 18/2017

Regulatory measures

Regulatory measures to ensure cost-effectiveness and efficient management of shunting operations

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Note to the readers

By decision no. 30/2016 of 23 March 2016, the Transport Regulation Authority (hereinafter: Authority) provided for the following:

1. measure 11.6.2 referred to in the annex to decision no. 70/2014 of 31 October 2014 only applies to the facilities under a Single Operator where shunting operations take place entirely on areas owned by Rete Ferroviaria Italiana S.p.A. (hereinafter: RFI);
2. a proceeding is initiated for the purpose of establishing the most appropriate procedures to ensure cost-effectiveness and efficient management of shunting operations with reference to facilities other than those referred to under 1.

The above-mentioned decision highlighted, in particular, that it is advisable to *"ensure the compliance with the principles of equity, transparency and non-discrimination in the selection process of the single shunting operators, as well as the optimisation of capacity allocation processes and a cost-effective and efficient management of shunting operations"*.

With Decision no. 93/2016 of 4 August 2016, the Authority launched a Call for input aimed at receiving comments and other useful information to establish the most appropriate regulatory procedures so as to ensure a cost-effective and efficient management of shunting operations.

In particular, the "Call for input" document described the main issues resulting both from the preliminary inquiries and the meetings held with the operators of three facilities (Padova Interporto, Verona Quadrante Europa and La Spezia), and all stakeholders were asked to comment:

1. on the option concerning the award of the shunting operation to a single operator and on procedures, terms and duration of such award, in order to ensure a more efficient management;
2. on any regulatory measures which were considered to be necessary for the purpose of maximising the cost-effectiveness and efficient management of shunting operations.

On the basis of the comments received following the call for input and by virtue of its specific responsibilities, by Decision no. 133/2016 the Authority submitted to consultation a first draft including 11 regulatory measures. These measures originally referred to fourteen facilities as identified on the basis of their complexity, strategic location within the national logistics system and need for a new approach in the organisation of shunting operations as a result of RFI's disengagement as Single Operator of these facilities as from 2013.

By 22 December 2016, the Authority received 16 replies to the consultation from 16 stakeholders concerned with the regulation of the case at issue. Following an assessment of these comments, the Authority drafted the present set of 12 regulatory measures.

These measures relate to 13 facilities which were selected according to the criteria provided for by Decision no. 133/2016, with the exception of Gallarate (Ambrogio Terminal) as this is a private terminal with single operator and single customer.

In 2017 and in the coming years, taking into account the increasingly strategic role of the logistics system connecting the national and regional railway network, the Authority reserves the right to monitor the effects of the application of the regulatory measures, also in terms of efficient integration of the logistics chain, and to ensure consistency with the developing legislative and regulatory framework, both at national and EU level.

Section I General obligations

Measure 1 Regulatory scope

1.1 The present Decision provides for regulatory measures for shunting operations as referred in article 13 of Legislative Decree no. 112 of 15 July 2015.

Measure 2 Definitions

2.1 For the purposes of these measures:

- a) the term «**railway operating area** » («*compensorio*») means an aggregated system relating to a port, inland terminal or industrial/commercial area consisting of service facilities, rail siding facilities and similar facilities owned by the manager of the national railway infrastructure (hereinafter: IM) and one or more railway stations or connecting facilities of the national railway network, as well as the related connecting rail infrastructure;
- b) the term «**service facility**» means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in article 13 (2), (9) and (11) of Legislative Decree no. 112/2015, including sea port infrastructures connected to railway services;
- c) the term «**rail siding facility**» means the installation, owned by a person other than the IM, where industrial or logistics activities are carried out, including ports and industrial development areas, that is connected to the railway infrastructure by means of a siding;
- d) the term «**operator of the railway area**» («*operatore compensoriale*») means a public or private entity, which is the owner of parts of the railway operating area where both shunting operations and freight movements (loading, unloading, transshipment) are carried out; where the owner of an area has transferred or assigned the use to other persons, he may delegate them to exercise the rights and obligations arising from the present Decision; as regards the areas falling within the jurisdiction of a Port Authority (*Autorità di Sistema Portuale*, hereinafter "AdSP"), the owner is the AdSP itself for the purposes of these regulatory measures;
- e) the term «**shunting service**» means a service for rolling stock movements, including coupling, uncoupling and removal of carriages provided to a railway operating area. This service includes:
 - primary shunting consisting of shunting operations for moving trains from arrival and departure tracks to the marshalling yards of the railway operating area, if any, and vice-versa;
 - secondary shunting consisting of shunting operations for moving trains from the marshalling yards of the railway operating area to the loading/unloading points within each production unit, and vice versa.
- f) the term «**Single Operator**» means any person, as identified by the operators of the railway area, which is assigned with functions pertaining to marketing and shunting, if any, in the railway operating area.
- g) the term «**Shunting Operator**» means any person, as identified by the Single Operator, which is assigned with functions pertaining to shunting in the railway operating area.

Measure 3 Scope of application

3.1 The regulatory measures referred to herein shall apply to the following railway operating areas:

<i>Novara Boschetto</i>
<i>Melzo Scalo</i>
<i>Milano Smistamento (marshalling yard)</i>
<i>Verona Quadrante Europa</i>
<i>Padova Interporto (Inland terminal)</i>
<i>Venezia Marghera Scalo (marshalling yard)</i>
<i>Bologna Interporto (inland terminal)</i>
<i>Castelguelfo</i>
<i>Piacenza</i>
<i>Ravenna</i>
<i>Nodo di La Spezia (La Spezia Marittima, La Spezia Migliarina, S. Stefano di Magra)</i>
<i>Livorno Calambrone</i>
<i>Bari Lamasinata</i>

3.2 As a result of *ad hoc* inquiries, which are initiated on its own initiative, upon motivated request or where significant infrastructure activities are in progress in the railway operating areas, the Authority may, following consultation with the IM and the AdSPs concerned, modify the above scope of application where it is necessary to extend or limit such scope. Such modifications are made public, including in the context of the review procedures of the national railway network statement (hereinafter NS) of the IM.

Measure 4 Single Operator

4.1 In any railway operating areas as identified in Measure 3, shunting shall be organised and carried out in compliance with the principles of transparency, equity and non-discrimination and shall ensure, based on measurable criteria, maximisation of productive efficiency and cost containment for users.

4.2 The Single Operator, in the railway operating areas covered by Measure 3.1, is identified and operates in accordance with the measurable principles and criteria set out in Measure 4.1 and holds the independence requirements referred to in Article 13 (4) and (5) of Legislative Decree no. 112/2015. This is without prejudice to the self-supply of services to be exercised according to the law and in compliance with the provisions of Measure 8.

Measure 5 Criteria for identification of the Single Operator and related obligations

5.1 In the railway operating areas referred to in Measure 3.1, the identification of the Single Operator of shunting operations is carried out transparently by the operators of the railway area.

5.2 For this purpose, the operators of the railway area agree on the criteria for their balanced, reasonable and weighted representativeness, as well as on the necessary and sufficient level of accord to state that substantive agreement has been reached. In case of non-agreement, representativeness is defined on the basis of a double majority criterion, whereby a decision is taken in the case of a favourable vote of more than 50% of the operators of the railway area, representing more than 75% of the freight traffic (number of train shunting operations) arriving and departing from the railway operating area in the previous year.

5.3 At the initiative of the operator with the highest share of incoming and outgoing freight traffic, the operators of the railway area, by applying transparent and non-discriminatory procedures and in accordance with the criteria of representativeness referred to in measure 5.2, shall draw up a draft document that may be qualified as “Rules of procedure for shunting operations in the railway operating area” (*Regolamento comprensoriale della manovra ferroviaria*, hereinafter: *ReCoMaF*).

5.4 The proposing operator shall submit the draft rules of procedure referred to in Measure 5.3 within 7 days of their drafting to the Railway Undertakings (hereinafter: RUs) which have carried out shunting operations in the railway operating area during the 12 months prior to the date of such drafting; within 10 days of the date of the submission, RUs may provide their written observations to the proposing operators, which shall sign the final version of *ReCoMaF* within the following 10 days, based on transparent and non-discriminatory procedures and in accordance with the criteria of representativeness set out in measure 5.2.

5.5 The *ReCoMaF*, as concluded under Measure 5.4, is transmitted to the Authority by the proposing operator referred to in Measure 5.4 within 7 days of its signing and, in any event, no later than 31 May 2017. Against the decisions taken, the parties concerned may apply to the Authority pursuant to Article 37 of Legislative Decree no. 112/2015, if the required conditions are met.

5.6 After 31 May 2017, in the facilities where it is not possible to conclude the *ReCoMaF*, persons other than the existing Single Operators may provide shunting operations, even to third parties, subject to the compliance with the provisions of measure 4.1.

5.7 Any later modification of *ReCoMaF* follows the procedure outlined in Measures 5.3, 5.4 and 5.5.

5.8 The rules of procedure for shunting in the railway operating area regulate at least the following:

- a) arrangements for common organisational and planning decision-making for shunting operations;
- b) mandatory revision of the rules of procedure in case of entry, exit or variations in the representativeness of railway operators, and the procedures thereof;
- c) method for identifying the Single Operator which, while ensuring that the measurable criteria set out in Measure 4.1 are met, is carried out by awarding the service, alternatively:
 - 1) to one of the operators or to a pool thereof, in accordance with the procedures laid down by existing legislation (for example: consortium, network contract under Law no. 33/2009);
 - 2) to a third party, which is characterized by an appropriate guarantee of economic and financial reliability, chosen by selective procedures by:
 - the competent AdSP, in case of a railway operating area including maritime port infrastructures which are connected to rail services;
 - a person acting in the name and on behalf of the operators of the railway area, in all other cases; this person represents the operators of the railway area in the shunting-related activities, particularly, in the relations with the Single Operator and the Authority;
- d) deadline by which the procedure for identifying the Single Operator shall be concluded with the award of shunting services to such Operator in accordance with the provisions contained in these Measures, which, in any case, may not exceed 31 December 2017 without prejudice to the deadlines of existing contracts at the date of entry into force of these measures;
- e) procedures whereby the Single Operator may award the sole operation of shunting services to one or more shunting operators, subject to the compliance with Measure 4.1;
- f) identification of the essential assets for carrying out shunting in the railway operating area, with particular reference to the tractive rolling stock specified in Measure 6, as well as the procedures for making it available to the Single Operator;

- g) obligation for all operators of the railway operating area to sign the planning document for rail services referred to in Measure 8;
- h) guaranteed minimum levels of performance of shunting operations and the related penalty system borne by the Single Operator, in accordance with Measure 9;
- i) obligation borne by the Single Operator and/or any shunting operators to:
 - 1) adopt non-discriminatory technical and economic conditions to be applied to customers of shunting services;
 - 2) apply to customers of shunting services charges that cannot exceed the cost of supply, increased by a reasonable profit, in accordance with Measure 43 of Annex 1 to the Authority's decision no. 96/2015;
 - 3) publish on the Operator's website the technical and economic conditions of shunting services, as set out in Measure 10;
 - 4) set up a separate reporting system for the cost accounting of shunting services;
 - 5) communicate to the Authority the technical and economic conditions that may be applied by way of derogation from those published pursuant to 3) as above;
 - 6) publish on the Operator's website the guaranteed levels of performance of shunting operations and the related penalty system.

5.9 The Authority reserves the right to impose appropriate remedies where the rules of procedure for shunting in the railway operating area does not comply with the present regulatory Measures.

Section II. Implementing steps

Measure 6 Allocation of shunting locomotives owned by RFI

6.1 With reference to the locomotives owned by RFI that are allocated under a gratuitous loan-for-use agreement to Single Operators at the date of the entry into force of the present regulatory measures, RFI takes the necessary steps in order to allow investments for the adaptation to the provisions of Decree no. 1/2015 of the National Railway Safety Agency (ANSF), in accordance with the terms established therein. For this purpose, unless more efficient procedures are identified, RFI may provide for the following:

- (a) alienation of locomotives;
- (b) adapting locomotives and recover the related costs by imposing a lease charge;
- (c) allocation of locomotives to the Single Operators or to one or more operators of the railway area, based on a gratuitous loan-for-use agreement including a take-over clause so as to subject the transfer of the title, at the end of the contract, to the payment - by the succeeding operator - of an amount that allows to recover non-amortised investments.

By 15 March 2017, RFI communicates its decisions to the operators of the railway area and to the Authority, together with the timing of the planned actions, so that the ReCoMaF can be defined according to the terms specified in Measure 5.

Measure 7 Term of the contracted shunting operations

7.1 In order to allow the Single Operator to recover the investments pertaining to shunting operations, and the operators of the railway area to periodically review the decisions made in the rules of procedure

as per Measure 5, the awarding of shunting services in the railway operating areas under a Single Operator shall have a term of no less than three years and no more than five years.

7.2 The term of the awarded service is notified to any person holding rights on the areas and infrastructures of the railway operating area.

Measure 8 Integrated scheduling of shunting operations

8.1 In order to pursue production efficiency and cost containment for users, the scheduling of shunting operations shall be coordinated with the planning of the national railway infrastructure capacity and with the load processing time within each production unit.

8.2 For the purposes of Measure 8.1, the operators of the railway area, the IM, the Single Operator and the railway undertakings concerned shall sign, with due regard to commercial confidentiality, a service planning document for the railway operating area (e.g. a M53 model for the “railway operating area”), assuming the responsibility for the compliance with the timetables provided for therein.

8.3 Without prejudice to the obligation to implement Regulation (EU) No. 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union and repealing Regulation (EC) No 62/2006, the IM, the railway undertakings, the operators of the railway area and the Single Operator are required, within their respective powers, to pursue the interoperability of their respective IT platforms or their integration.

Measure 9 Service Level Agreement (SLA)

9.1 Without prejudice to the provisions under Measure 11.6.1 of Authority's Decision no. 70/2014, the Single Operators shall, within 60 days of entry into force of these regulatory measures, adopt a guarantee system for the quality levels of the service provided which shall be at least equivalent to that provided for in the model contract between Single Operator and Railway Undertaking attached to Section 5 of the NS, edition July 2016 and provide, upon initial application, for penalties accounting for at least 10% of the charge applied to the shunting operation concerned.

9.2 Single Operators shall publish on their websites, on a monthly basis, the overall deadlines and the deadlines by each user concerning the performance of the activities included in the model contract between Single Operator and Railway Undertaking as attached to Section 5 of the NS, edition July 2016.

9.3 This measure applies also where shunting services are purchased by persons other than railway undertakings.

Measure 10 Charging methods

10.1 In order to ensure uniform rules for charging shunting operations and facilitate the comparison, by the service users, of the technical and economic terms offered in the railway operating areas, as from 31 December 2017 the charges applied by Single Operators shall refer, in particular, to the type of service provided in paragraph 6.3.2 of the NS, edition December 2012.

10.2 The charging arrangements set out in Measure 10.1 shall be applied to secondary shunting, too, as from the same date indicated therein.

10.3 This is without prejudice to the possibility for Single Operators to provide for extra charges for additional services or surcharges arising from the specific characteristics of the facility and the operations requested.

Measure 11 De facto Single Operator

11.1 Measures 4.1, 6, 8, 9 and 10 shall apply also to facilities where it is not possible to conclude the *ReCoMaF* under Measure 5, but where shunting operations continue to be provided by a Single Operator.

Measure 12 Applicable rules

12.1 The provisions referred to in article 37 (4) of Legislative Decree no. 112/2015 shall apply for the purpose of these measures.