

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

PRELIMINARY REPORT

1. PROCEEDING

1.1. Preliminary stages of the proceeding

For a summary of the pre-consultation proceeding as referred to in Decision no. 133/2016, please refer to the explanatory report, Annex B) to the above-mentioned Decision.

1.2. Consultation referred to in Decision no. 133/2016

Based on the preliminary inquiries and by virtue of its specific competences, the Authority submitted to consultation a first draft including 11 regulatory measures (Decision no. 133/2016). 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 (hereinafter also SO) of these facilities as of 2013.

The draft regulatory measures were submitted to consultation pursuant to article 5 of the rules of procedure for implementation of the Authority's decision-making proceedings and for stakeholders' participation. The deadline for submission of comments and proposals by the stakeholders was set on 22 December 2016, whereas the deadline for the conclusion of the proceeding initiated by Decision no. 30/2016, was extended from 30 November 2016 to 10 February 2017.

Based on the assessment of the comments made during the consultation, which are reported below, the Authority drafted a set of 12 regulatory measures. These measures relate to 13 facilities including those

initially selected according to the criteria provided for by Decisions no. 30/2016 and no. 133/2016, with the exception of Gallarate (Ambrogio) as this is a private terminal with single operator and single customer, as it was noted by some stakeholders and assessed by the Authority during an on-site inspection.

With regard to the scope of application of the measures, the Authority will assess, with reference to the comments made by some stakeholders on Measure 3 (see below), whether to initiate a proceeding whereby, subject to verification of the applicable terms and to stakeholder consultation, the measures may be extended to other railway operating areas (*«comprensori ferroviari»*).

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 its 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.

For each regulatory measure, the main comments by the participants in the consultation and the following assessment by the Authority leading to the final drafting of the measures are reported here below.

2. MAIN ISSUES COVERED BY REGULATORY MEASURES

Section I of the draft regulatory measures that were submitted to consultation (“General obligations”) included the five following measures:

- Measure 1 Regulatory scope;
- Measure 2 Definitions;
- Measure 3 Scope of application;
- Measure 4 Single Operator;
- Measure 5 Criteria for identification of the Single Operator and related obligations.

Section II (“Implementing steps”) included six measures as follows:

- Measure 6 Allocation of shunting locomotives owned by RFI;
- Measure 7 Term of contracted shunting operations;
- Measure 8 Integrated scheduling of shunting operations;
- Measure 9 Service Level Agreement (SLA);
- Measure 10 Charging methods;
- Measure 11 Applicable rules.

The final text includes a new Measure 11, “*De facto* Single Operator”, totalling 12 regulatory measures.

SECTION I – General obligations

2.1. Measure 1 – Regulatory scope

In the absence of any comments, Measure 1 is adopted in its original wording.

2.2. Measure 2 – Definitions

2.2.1. Summary of comments

Sent by	Measure	Subject
Autorità portuale di Venezia (Venice port authority)	-	Considers that the Port System Authority (AdSP)/Port Authority (AP), that under the law is the body managing the port facility which may encompass a railway operating area, cannot be regarded as an operator of the railway operating area and consequently is not eligible for assisting in identifying the SO as defined, i.e. the person that is supposed to operate in the territory falling within the AdSP/AP's responsibility.
Autorità portuale di Venezia (Venice port authority)	-	Assuming that the "Measures" are considered to be related to port rail services, too, it would be possible in some cases that contracts for the awarding of services are unilaterally modified, to the detriment of operators that would certainly claim damages, which could not be charged to the AdSP/AP as they are not liable in this respect.
Autorità portuale di Venezia (Venice port authority)	-	Specific measures relating to ports are needed to balance the above-mentioned principles of law with the nature of the port railway service as a service of general interest pursuant to Law no. 84/94 and the regulatory role of AP/AdSP.
Assiterminal	-	Shunting operations in the port area are regulated by a decree of the Minister of Transport dated 4 April 1996 among the so-called services of general interest, as referred to in art. 6 (1) (c) of Law no. 84/94. Therefore, the issue does not appear to fall within the regulatory responsibility of the Authority (hereinafter, also ART). Wagon shunting in ports is generally carried out in State areas and by using facilities that are not owned by RFI, therefore not falling under the cases identified by ART under paragraph 1 of its Decision no. 30/2016 of 23 March 2016.
Quadrante Servizi	02.1 a	Requests to specify whether the reference station of the railway operating area is part of the area itself, at least when it is for exclusive use.
Quadrante Servizi	02.1 b	Requests to specify whether a terminal connected to the National Rail Infrastructure (<i>Infrastruttura Ferroviaria Nazionale</i> - I.F.N.) is a service facility.
Quadrante Servizi	02.1 c	Requests to specify whether a terminal, owned by R.F.I., connected to an "exclusive and own" railway station serving the same terminal, is a suitable siding for performing intermodal operations.
Quadrante Servizi	02.1 c	Requests to specify whether, in a railway operating area, a facility which is used exclusively for intermodal (rail-road) operations is an intermodal connected facility.
Dinazzano Po	02.1 d	Suggests that for the definition of "operator of the railway area" the requirement related to the holding of rights on parts of the railway operating area be also fulfilled through suitable contractual relations (including network contracts/contractual agreements between different operators).
FerCargo	02.1 d	Requests a more detailed definition/qualification of "operator of the railway area"
Unione Interporti Riuniti	02.1 d	Requests to specify whether "operator of the railway area" means RFI, a terminal manager or any owner of a railway infrastructure which is linked up or connected to the National Rail Infrastructure (I.F.N.).

Sent by	Measure	Subject
Fercargo Manovra	02.1 d	Requests to combine as far as possible the definitions of "Operator of the railway area" with respect to jargon and current rail terminology.
Quadrante Servizi	02.1 d	Requests to specify whether the infrastructures of the railway operating area include tracks, point switches and signalling, as well as whether locomotives qualify as instrumental infrastructures or operational tools for the performance of the activity, and the role played by the Safety Management System.
Quadrante Servizi	02.1 d	Requests to specify whether the railway operator is an entity that provides directly train movements or uses a third party for this activity.
Quadrante Servizi	02.1 d	Requests to specify whether RFI is an operator of the railway area.
Quadrante Servizi	02.1 d	Requests to specify whether the terminal manager is an operator of the railway area.
Quadrante Servizi	02.1 d	Requests to specify whether, in case of a terminal owned by RFI, the latter is an operator of the railway area.
Quadrante Servizi	02.1 d	Requests to specify whether any owner of a railway infrastructure which is linked up or connected to the National Rail Infrastructure (I.F.N.) is qualified as an operator of the railway area.
Interporto Padova SpA	02.1 f	Requests, where the service of the Single Operator is awarded to the owners of the infrastructure falling within the railway operating area of reference, which do not provide shunting directly, that they should be allowed to use a shunting Operator to be chosen through transparent open tendering procedures.
Quadrante Servizi	02.1 f	Requests to specify whether, according to the definition of Single Operator, the operators of the railway area may not be able to identify the Single Operator.
Quadrante Servizi	02.1 f	Requests to clarify whether the Single Operator is responsible for the actual operation of shunting activities in the railway operating area.
Quadrante Servizi	02.1 f	Requests to specify whether the role of Single Operator corresponds to that of the Single Operator of shunting services.
Quadrante Servizi	02.1 f	Requests to clarify whether OPERATION means direct execution of shunting operations.

2.2.2. Assessment by the Authority

The **railway operating area** has been better defined by including the stations and facilities owned by the IM and by highlighting that it belongs to a port, an inland terminal or an industrial/commercial area. The latter case has been included with a view to using, as far as possible, the terminology contained in the "*Provisions, Instructions and Contractual Clauses for the Construction and Operation of Siding Connections with Commercial, Industrial and Similar Establishments*" (*Disposizioni, istruzioni per la costruzione e l'esercizio di raccordi con stabilimenti commerciali, industriali e assimilati*, hereinafter: DICCs) issued by the Infrastructure Manager (hereinafter, also IM).

The definition of **service facility** has been clarified by emphasizing that, *inter alia*, port maritime infrastructures are part of this cluster (pursuant to Article 13 (2) (g) of Legislative Decree no. 112/2015) as noted in the comments submitted by Venice Port Authority and Assiterminal with reference to ART

responsibilities for port shunting operations. Actually, if operated in ports, the railway service (defined as "*port railway service*" pursuant to Ministerial Decree of 14 November 1994 implementing Article 6 of Law no. 84/1994) is included among the services of general interest to be supplied upon payment to port users (as laid down in Article 1 of Ministerial Decree of 4 April 1996), and its awarding and control are assigned to the Port Authority pursuant to Article 6 (4) (c) of Law no. 84/1994, as amended by Legislative Decree no. 169/2016. However, such identification of specific responsibilities concerning awarding and control in no way determines the exclusion of the Authority's responsibilities, which under art. 37 (2) (a) of Decree-Law no 201/2011 is entrusted with the task of ensuring equitable and non-discriminatory access also to port infrastructures, according to methodologies that encourage competition, production efficiency and cost containment for users, businesses and consumers.

In particular, under article 13 (9) and article 37 of Legislative Decree no. 112/2015 the Authority is entrusted with regulatory responsibilities regarding access to the services referred to in paragraph 2 of the same article 13, including, as mentioned above, the services provided in the maritime port infrastructure connected to rail services.

Clearly, the responsibilities allocated under the above-mentioned provisions, to the AdSP on one side and to the Authority on the other, must be exercised in compliance with their respective roles and under a systematic approach that assigns AdSP the role of regulation of port rail services, but at the same time commits the Authority to define a "regulatory framework" in order to take account of the associated need to ensure, at national level, a "uniform approach", as referred to in the National Strategic Plan for Ports and Logistics (*Piano Strategico Nazionale della Portualità e della Logistica*, PSNPL), released by the Council of Ministers on 6 August 2015, with reference to the necessary coordination at national level so as to develop the challenges and potential of the Italian port system in a supranational context.

The definition of **operator** of the railway area has been extensively revised, in the light of the many observations aimed at its clarification. It has been specified that the term "owner of rights on parts of the railway operating area" means the owner of the areas where shunting is carried out (in accordance with the recitals of Decision no. 30/2016 and taking into account the potentially unlimited duration of the rules of procedures of the railway operating area), without prejudice to any delegation of the relevant rights and fulfilment of obligations to holders of rights of use or entitlement (lessees, concessionaires, etc.). On account of this clarification, the Single Operator or Shunting Operator as such, as well as the Railway Undertakings (hereinafter, also RUs) are clearly excluded from the operators of the railway area.

In the case of ports, the owner is identified with the port authority, as the entity responsible for the management of the state property falling within the port area.

In order to simplify the decision-making process for identification of the Single Operator and approval of the rules of procedures of the railway operating area (see Measure 5.2 below), also the term “operator of the railway area” has been defined so as to include only those who are most directly involved in the efficiency of shunting operations. As compared with the definition contained in the document submitted to consultation, it has been provided that the parts of the railway operating area taken into consideration are only those used, in addition to shunting operations, also for the movement of goods (loading, unloading, transshipment), be such movement aimed at the continuation of transport, storage or use of goods in an industrial plant. It was thus intended to circumscribe the definition to the holders of assets used in the processes, other than those pertaining to rail services, which are immediately upstream or downstream the shunting operation. As a result thereof, by way of example, owners and/or operators of basic sidings, facilities for rolling stock depot or maintenance, as well as the Infrastructure Manager are excluded from the definition of operator of the railway area.

The **Single Operator**, in the text submitted to users, was defined as an entity "*entrusted on a unitary basis with the functions relating to marketing and operation of shunting with respect to the railway operating area*". This definition has been fully revised to remove some doubts arising from the consultation that this operator, as identified in accordance with the principles and criteria of the regulatory measures, might use another third party, that may be qualified as **Shunting Operator, which** is entrusted with functions pertaining only to the exercise of shunting operations. Accordingly, another definition was adopted for the latter.

2.3. Measure 3 – Scope of application

2.3.1. Summary of comments

Sent by	Measure	Subject
Interporto Centro Italia Orte	03.1	Extend the scope of Decision no. 30/2016 to Orte railway operating area (including Orte RFI Station and the neighbouring inland terminal area) by providing for a unitary award of the shunting operation irrespective of the ownership of the areas, in order to guarantee efficient management, as "Centro Italia-Interporto Orte" is an intermodal hub serving the EU TEN-T1 corridor.
Terminal Piacenza Intermodale	03.1	Exclude the company Terminal Piacenza Intermodale from the scope of application of the Decision as it is a private connection with a single operator and customer.

Sent by	Measure	Subject
FerCargo	03.1	Extend the application of the regulatory measures also to border points (international transit) where shunting is still necessary and to ports depending on their characteristics. For highly strategic international terminals, the SO function should remain in the hands of RFI, which may resort - through open competitive procedures - to the subcontracting of services to third parties. Further, private terminals or sidings (e.g. Gallarate-Ambrogio) with a single terminal operator and a single customer should be excluded from the list provided for in the scope of application.
FerCargo	03.1	Private terminals or sidings (e.g. Gallarate-Ambrogio) with a single terminal operator and a single customer should be excluded from the list provided for in the scope of application.
Autorità portuale di Venezia	03.1	The approach that is envisaged in ART's draft "Measures" may not be suitable for the diverse conditions of existing ports.
RFI	03.1	Requests to delete Gallarate from the list of railway operating areas that are subject to regulation since in this case the SO is no longer necessary, as it was agreed with the stakeholders and ART in the preliminary stage.
AssoFer	03.1	Considers that terminals with a single (working and effective) operator should be excluded from the list.
Fercargo Manovra	03.1	Considers necessary to extend this proposal to any facilities connected to the national network (industrial sidings, cross-border terminals, etc.) where one or more sidings or operators are involved in order to guarantee future developments.
DB Rail	03.1	Considers of little use to keep the facilities with only one operator of the railway area within the scope of Measure 3.
DB Rail	03.1	Suggests that the scope of Measure 3 be extended to all ports in view of their specificity and strategic interest. Shunting operations related to train arrival and departure could be easily integrated into the internal port shunting; thus, the identification of a single operator which may operate on the whole port/railway operating area could lead to both operational and economic benefits.
Captrain	03.1	Suggests that railway operating areas at border crossings should be included in the regulatory measures, for those international transits where shunting operations are required, i.e. the railway operating areas of Domodossola, Tarvisio, Brennero and Villa Opicina. For these terminals, the SO function should necessarily remain in the hands of RFI, which may resort - through open competitive procedures - to the subcontracting of services to third parties.
Rail Traction Company SpA	03.2	Suggests that the Contractual Agreement - Investment between the Ministry of Infrastructure and RFI should be mentioned as the decisive criterion for updating the list of facilities with SO (the plan may include those investments that make shunting in a facility independent from the SO).
RFI	03.2	Considers that the IM should always be consulted in case of any changes in the scope of application of the regulatory measures, also taking into account the scenarios for enhancing the infrastructural and technological set-up.

2.3.2. Assessment by the Authority

As noted by a number of participants in the consultation, Gallarate terminal (Ambrogio) has been excluded from the scope of application as it is a private terminal with a single operator and a single customer.

The intermodal Piacenza Terminal requested the exclusion of the facility from the list of the railway operating areas falling within the scope of application as it is a private siding with single operator and customer. This request cannot be agreed upon, as the terminal at issue is in any case a railway operating area where several operators carry out their activities.

The Authority reserves the right to extend or limit the scope of the railway operating areas subject to the regulatory measures as a result of any specific inquiries, initiated both on its own initiative or upon motivated request, e.g. in cases where technological innovations resulting from infrastructural investments significantly modify the way in which shunting operations are carried out.

In particular, with reference to the reports received during the consultation stage in relation to facilities at border crossings, to those involving sea port infrastructures connected to rail services and to Orte facility, the necessary detailed information on their organization is not available to the Authority at present. After the appropriate necessary checks, the Authority will assess whether to initiate an *ad hoc* proceeding to extend the regulatory measures to these facilities.

Further, the Measure has been amended compared to that submitted to consultation, by providing that the extension or restriction of the scope of application of the regulatory measures, as requested by the IM, includes its prior consultation. Similarly, it was considered to include Port Authorities in any preliminary consultations which are preparatory to the modification of the list of the railway operating areas concerned.

2.4. Measure 4 – Single Operator

2.4.1. Summary of comments

Sent by	Measure	Subject
FerCargo	04.2	Assesses positively the possible use of self-supply of services in case of reduced service quality and/or unjustified increase in the prices proposed by the SO to the RUs.
Unione Interporti Riuniti	04.2	Considers that the market power of the SO should also be assessed at local level and not only on a national basis.
Fercargo Manovra	04.2	Considers that possible self-supply should be guaranteed in the manner provided for by the rules of procedures of the railway operating area, without prejudice to the operational convenience of the same area in terms of productivity and operational safety.
Fercargo Manovra	04.2	Considers that the SO should be the only regulatory body within the railway operating area.
Quadrante Servizi	04.2	Considers that the market power of the SO should also be assessed at local level and not only on a national basis.
Quadrante Servizi	04.2	Notes that the shunting operator should be a distinct and independent entity from RUs.

Sent by	Measure	Subject
Quadrante Servizi	04.2	Considers that the independence of the shunting operator from railway undertakings should be safeguarded, including from the point of view of the Safety Management System, by assessing whether it is advisable to adopt an <i>ad hoc</i> certification for shunting services and by regulating the pooling procedure, which is presently widely used.
RFI	04.3	The deadline of 31 December 2017 by which, for each railway operating area, the shunting service shall be assigned to a SO, is considered not to be compatible with path planning and sale activities. Considering that the new timetable period starts on 10 December 2017, it is important that the SO be appointed at least by 30 September 2017 so as to be able to carry out all the activities to define, allocate and contract the paths with RUs in order to ensure continuity of service of the RUs without having to initially provide for a transitional management of the single operator that is providing the service at that time.
Fercargo Manovra	04.3	Notes that the deadline of 30 April 2017 specified under 4.3, as a consequence of that of 31 March 2017 under paragraph 5.3, seems impossible to be met, should the definition of "operator of the railway area" include many different entities.

2.4.2. Assessment by the Authority

The following sentence "*In each railway component identified by Measure 3*" has been deleted from Measure 4.1., as well as the specification "*where more than one operator of the railway area is present*", which has become unnecessary after the deletion of Terminale Gallarate (Terminal Ambrogio) from the list, as the only terminal with a single operator of the railway operating area.

Measure 4.2 specifies that the Single Operator, for the railway operating areas mentioned under Measure 3.1, is identified and operates in accordance with the measurable principles and criteria identified therein (principles of transparency, equity and non-discrimination by ensuring, on the basis of measurable criteria, the maximization of production efficiency and the cost containment for users). Only the reference to the general rule on the independence criteria as referred to in Article 13 (4) and (5) of Legislative Decree no. 112/2015 was left, since the Authority considered that the proposal made by some participants in the consultation - i.e. imposing that the shunting operator is a non-RU entity - was not acceptable. Actually, the present regulatory framework, unlike what was originally provided for in Legislative Decree no. 188/2003 under article 20, does not generally require that the management of shunting operations be entrusted to non-RUs entities.

During the consultation, Fercargo has positively assessed the use of self-supply, but appears to consider it acceptable only in the case of a reduction in the quality of the service and/or unjustified increase in the prices proposed by the SO to the RUs. Further, Fercargo Manovra seems to propose that the modes of self-supply

be governed by the rules of procedure of the railway operating area, for the purpose of safeguarding "the operational convenience of the railway operating area in terms of productivity and safety".

In this respect, it should first be noted that, under article 13 (2) of Legislative Decree no. 112/2015, access to "shunting facilities" shall be granted to all railway undertakings under equitable, non-discriminatory and transparent conditions. Further, the regulation of shunting services by the Authority should not point to an analytical check of the qualitative and economic conditions offered in each facility by the Single Operators and by any persons that intend to operate through self-supply. The latter should be rather considered as a signal of market self-regulation against the efficiency losses of the Single Operator and, as such, it should be allowed unconditionally, subject to safety requirements only.

Measure 4.3 on the procedure for the identification of the Single Operator and the related timeframe for implementation has been deleted from Measure 4 and included in Measure 5.

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

2.5.1. Summary of comments

Sent by	Measure	Subject
Serfer (Genova)	05.2	Proposes including criteria that allow operators of the railway area to overcome any situations where the absence of unanimous agreement for the definition and/or application of the rules of procedure of the railway operating area could affect the performance of shunting operations. In the absence of unanimity among the operators concerned, it is proposed to adopt a majority criterion that allows to overcome standstill situations, including for decision-making.
Rail Traction Company SpA	05.2	Requests to specify that the rules of procedure of the railway operating area, which provide for the modalities to identify the SO, as specified in measure 5.4, are shared with the RUs involved in the relevant railway operating area.
FerCargo	05.2	Requests to regulate greater participation and involvement of RUs in the selection process of the SO through the rules of procedure of the railway operating area.
Unione Interporti Riuniti	05.2	Requests to specify whether the "rules of procedures of the railway operating area", as the guidelines for the SO, should also be signed by RUs and MTOs operating in the area.
RFI	05.2	Suggests introducing a principle into the "Rules of procedure of shunting operations in the railway operating area" that could assist in case the stakeholders concerned with a specific facility do not unanimously agree on the identification of organisational, decision-making, information and planning choices. In particular, it is considered that, in the event of non-agreement on the appointment of the SO, the latter should be identified among the operators of the railway operating area on the basis of the criterion of the higher volumes achieved (number of operated trains/managed traffic).
Fercargo Manovra	05.2	Considers that the identification of the SO should involve all stakeholders of the railway operating area which are concerned with the shunting service.

Sent by	Measure	Subject
Fercargo Manovra	05.2	Considers that the "rules of procedure of shunting operations in the railway operating area" should provide for references to already operating documents in the national railway system (M47, Siding Connection File, M53, etc.)
Fercargo Manovra	05.2	Considers that the SO should be involved as a technical party in drafting the rules of procedure of shunting services in the railway operating area.
Captrain	05.2	Requests to regulate greater participation and involvement of RUs in the selection process of the SO through the rules of procedure of the railway operating area and give maximum emphasis to the processes for adoption and revision/amendment of the rules of procedure thereof. In this respect, a procedure for the adoption of the rules of procedures could be provided: the operators of the railway area, based on transparent and non-discriminatory procedures, could define a proposal for the rules of procedure of the railway operating area. The proposal would be submitted, within 7 days, by the operators of the railway area to ART that would launch a public consultation thereupon, to be completed within a reasonably short time (2-3 months). Taking into account the comments submitted by RUs and RFI, and any remarks by the operators, ART would require modifications and additions to the initial proposal of the rules of procedure, which, as modified and supplemented as the case may be, would enter into force with a formal decision made by ART.
Quadrante Servizi	05.2	Requests to define on the basis of which criteria (representativeness, majority) the pool of operators of the railway operating area takes decisions on shunting and on the relevant Single Operator.
Quadrante Servizi	05.2	Requests to specify whether the rules of procedure should be signed also by RUs and multimodal operators in the railway operating area.
Quadrante Servizi	05.2	Requests to clarify the role of RUs in drafting the rules of procedure, as well as their qualification as operators of the railway operating area.
RFI	05.3	It is not clear who should be promoting the preliminary activities which are necessary for issuing the "rules of procedures of shunting operations in the railway area", nor how and since when should these activities be promoted, given the number of operators involved.
FerCargo	05.4 b	Suggests giving maximum emphasis to the processes of adoption and revision/amendment of the rules of procedure of the railway operating area. RUs are the purchasers of the services covered by the regulatory measure and their participation in the definition of the rules of procedure will serve to enhance the key role played by shunting operations in the competitiveness of the railway service market.
Fercargo Manovra	05.4 b	Considers that the rules of procedures of the railway operating area should provide for periodic fixed-term updates as a result of the entry of new operators and of legislative developments.
Captrain	05.4 b	Considers that for substantive changes to the rules of procedure, RUs should be entitled to submit comments in the framework of a public consultation launched by ART, as a result of which the rules of procedure may be in case supplemented or amended.
Terminal Piacenza Intermodale	05.4 c	Considers that the identification of the person representing the railway operators should be made on the basis of a free-of-charge assignment.
Serfer (Genova)	05.4 c	In case of non-agreement on the rules of procedure or on the award of shunting operations to an operator of the railway area, the procedures for award of the service should be defined by an awarding entity which is identified among the operators based on the "prevalence criterion" (volumes of activity, turnover, etc.).

Sent by	Measure	Subject
FerCargo	05.4 c	Considers that the identification of the person representing the operators of the railway area should be made on the basis of a free-of-charge assignment.
RFI	05.4 c	Calls for an ART statement on the compatibility - as for railway operating areas falling within the scope of application only - of the management body described in the DICCs with the Single Operator model. Without any clarification, there may be critical cases where the designation of the Management Bodies operates under contracts with a longer term than the horizon set by the draft regulatory measures referred to in Annex A to Decision no. 133/2016, which provides for the identification of the SO by the end of next year.
AssoFer	05.4 c	Considers that the identification of the person representing the railway operators should be made on the basis of a free-of-charge assignment.
Fercargo Manovra	05.4 c	Requests to take into account the measures of the IM for identifying the person representing the operators of the railway area.
Captrain	05.4 c	Considers that the person identified in the rules of procedure should be the sole representative of the operators of the railway area, including in the relations with the RUs.
Quadrante Servizi	05.4 c	Requests to specify whether the person representing the operators of the railway area (Measure 5.4 c) can be the Single Operator itself.
Terminal Piacenza Intermodale	05.4 d	Suggests removing the public tender obligation for private sidings and keep it only for wholly public sidings.
Serfer (Genova)	05.4 d	For the management of specified investment projects, aimed at the development and revitalisation of the railway operating area, the identification of the SO should be carried out by awarding the shunting operations to third parties (other than the operators of the railway area) who commit to the realization of these investment projects (also in the form of association) by assuming part of the related risk.
Unione Interporti Riuniti	05.4 d	Requests to specify whether the services may be awarded to one or more operators of the railway area (including where pooled under a network contract).
Unione Interporti Riuniti	05.4 d	Requests to specify whether the SO, which is attributed marketing functions, may carry out the operation of shunting activities based on standard network contracts in which the activities are carried out by an operator of the railway area which is part of the network.
Unione Interporti Riuniti	05.4 d	Considers as a factor of competitiveness that the railway operator, or the third party, be chosen in accordance with its capacity of ensuring and promoting operational synergy in the management of service facilities or connections, including for the purpose of fulfilling the new approach of Regulation (EU) No 913/2010.
RFI	05.4 d	Apparently, under letter d) the adoption of selection procedures for the identification of the SO is provided for only in the case of award to a third party, other than the operators of the railway area, while under 2.2.2 of the Explanatory Report such requirement would also be applied in case of choice of the SO among the operators of the railway area.
AssoFer	05.4 d	Considers that the award may be made to one or more operators of the railway area - including where pooled under a network contract - so that the SO may operate the shunting services based on standard network contracts where the activities are carried out by an operator of the railway area which is part of its network.
AssoFer	05.4 d	Requests to allow the SO to operate shunting services based on standard network contracts where activities are carried out by an operator of the railway area which is part of its network.

Sent by	Measure	Subject
Fercargo Manovra	05.4 d	Indicates to identify a legal form of pooling, similar to the consortium (including by using the network contract – the legal basis being Law No 33 of 9 April 2009), for the identification of the Single Operator, where it is chosen among the operators of the railway area.
DB Rail	05.4 d	Suggests that among the criteria for identifying the SO, preference should be given to applicants that operate independently without subcontracting shunting operations or referring the certification of its own staff and/or means to a railway company, thus creating potential limitations to its independence.
Captrain	05.4 d	When identifying the SO, in order to ensure impartiality in the access to shunting operations, for the sake of a correct competition among undertakings, the function of the SO should not be assumed directly by a railway undertaking.
Captrain	05.4 d	Considers that the rules of procedure of the railway operating area should allow for the assignment of the SO function to an operator of the railway area only where it has not been possible to carry out a competitive selection procedure for lack of expression of interest by third parties.
Captrain	05.4 d	Considers that, where the conditions for carrying out an open selection procedure are not satisfied by the operators, the Single Operator function should be entrusted with only one operator of the railway area (and not, as proposed in the draft regulatory measures, even to more than one).
Captrain	05.4 d	Trusts that, prior to the competitive procedure for selecting the operator which will perform the functions of SO, operators of the railway area should be required to consult RUs, especially those who usually use shunting operations.
Captrain	05.4 d	Requests to provide for an obligation for operators of the railway area to give adequate and prior publicity and information on the launch of the SO selection procedure in each railway operating area.
Quadrante Servizi	05.4 d	Requests to clarify whether the network contract tool (the legal basis being Law no. 33 of 9 April 2009) may be the key to fulfil not only the regulatory measures, but also to define the scope of activity of the railway operating area and identify the operators thereof.
Quadrante Servizi	05.4 d	Requests to clarify whether the Single Operator should be chosen among the operators of the railway area.
Quadrante Servizi	05.4 d	Requests to specify whether, based on Measure 5.3 d, a scenario involving two Single Operators would be possible.
Quadrante Servizi	05.4 e	Requests to specify the role of the owners of siding-connected facilities in the definition of the rules of procedure and in the identification of the Single Operator of shunting services, as well as in the definition of the obligation to ensure access to any facilities by the Single Operator.
Quadrante Servizi	05.4 f	Requests to specify the relationship between the qualification of an essential asset attributed to the locomotives made available by RFI and the need to adapt such means to the latest safety standards.
Terminal Piacenza Intermodale	05.4 i	The SO should provide a suitable guarantee of economic reliability/financial security.
FerCargo	05.4 i	Considers that the SO should provide a suitable guarantee of economic reliability and financial security.
AssoFer	05.4 i	Requests that the SO provides a suitable guarantee of economic reliability/financial security.

2.5.2. Assessment by the Authority

With reference to Measure 5.2, some of the comments related to the concern that in the decision-making stage it is not possible to establish a criterion of adequate representativeness among the operators, or in any case it is not possible to reach unanimous agreement on the identification of the Single Operator and of the "Rules of procedure of shunting operations in the railway operating area" (*Regolamento Comprensoriale della Manovra Ferroviaria*, hereinafter: ReCoMaF).

With reference to this issue, in order to promote convergence of decision-making by operators of the railway area, Measure 5.2 has been amended by providing that, in case of non-agreement, representativeness is defined on the basis of the double majority criterion, whereby a decision is made with a favourable vote of more than 50% of the operators who account for more than 75% of the freight traffic arriving and departing from the railway operating area in the previous year.

It was further considered appropriate to ensure the involvement of the concerned RUs through a consultation on ReCoMaF before its final approval, the deadline of which was therefore postponed until 31 May 2017, and the following transmission to the Authority.

Should it be not possible to achieve sufficient convergence to approve the ReCoMaF with the majorities required, it has been clarified that in this case the Single Operator scheme will be laid aside, while other persons, too, will be allowed to carry out the operations, both self-shunting and provided by third parties. This provision fits in with the fact that in any case the Single Operator scheme implies a restriction of competition and, as such, it should be at least justified by a broad consensus among the operators involved in the identification of the SO and on the main methods of planning and performing the service.

For the purpose of promoting the drafting of ReCoMaF by operators of the railway area, the operator with the highest share of inbound and outbound freight traffic has been identified as the party responsible for taking the lead. The same person shall have to attend to the consultation procedure with the RUs.

While accepting the request for institutionalizing the ReCoMaF review process, promoted by a number of stakeholders, Measure 5.7 provides that any modification of ReCoMaF follows the procedure outlined in measures 5.3, 5.4 and 5.5.

With reference to the minimum content of ReCoMaF (former Measure 5.4, now Measure 5.8), the role of the person representing the operators of the railway area was clarified in the first place. The identification of this person is functional to the management of the selection procedure for awarding the service to a third party, so there is no need to identify such person if it is opted for awarding the service to one of the operators of the railway area or to a pooling thereof. The proposal by some stakeholders to entrust the above

representative with a free-of-charge mandate is not considered acceptable, since some of the activities carried out by this person on behalf of the operators of the railway area (e.g. organisation of the tender to entrust the mandate of Single Operator) may certainly imply economic burdens. In case of a railway operating area including maritime port infrastructures, the above representative may only be the Port Authority, having regard to the provisions of Law no. 84/1994, art. 6 (10), as amended.

In case of awarding by the Single Operator of the sole shunting operation to one or more operators, taking into account the considerations under paragraph 2.2.2 above, it is specified that the procedures for such awarding shall comply with the principles and criteria set out in Measure 4.1.

In relation to the request by some participants in the consultation to clarify the relationship between the regulatory measures under consideration and the "*Provisions, Instructions and Contractual Clauses for the Construction and Operation of Siding Connections with Commercial, Industrial and Similar Establishments*" (DICCs) issued by RFI, it is worth pointing out that the functions of the entity representing the operators of the railway area, as outlined above, may only partially overlap with those of the Single Operator referred to in Article 31 of DICCs, of course without prejudice to the possibility that in specific cases the two roles can be combined in the same entity.

As for the case where the role of the Single Operator is played by several operators of the railway area, some examples of legal institutes have been mentioned that may be used to formalise their collaboration relationship, drawing on recurring cases such as the network contract pursuant to Law no. 33/2009.

Again, with respect to the procedures to identify the Single Operator, RFI asked to clarify why the adoption of selection procedures for such identification is provided for only when it is assumed that the service is awarded to a third party, other than the operators of the railway area, while under 2.2.2 of the Explanatory Report attached to Decision no. 133/2016, such requirement would seem to apply even for the choice of the SO among the operators themselves. In this regard, it should be pointed out that, even when the SO is identified among the operators of the railway area, a comparative assessment of production efficiency and cost of the service cannot be disregarded, as is apparent from the reference to the "compliance with the measurable criteria referred to in Measure 4.1" (the misprint contained in the draft regulation submitted to consultation which referred to Measure 5.1 has been corrected). The award to a third party, however, requires a greater presence of standard procedures for the a.m. comparative assessment; this is why the term "selection procedure" has been used only in this case.

The deadline for the conclusion of the procedure for identification of the Single Operator and the assignment of the shunting operation thereto, which was previously referred to under measure 4.3, has been now

included in the mandatory content of ReCoMaF. With reference to RFI's proposal to anticipate the deadline for the allocation of the shunting operation to the Single Operator by 30 September 2017, it is noted that, due to the deadline for the completion of ReCoMaF, it is necessary to provide for a period of at least six months for carrying out the selection procedures of the Single Operator.

With reference to the deadline set for the identification of the Single Operator, it has been clarified with respect to the observations submitted by Venice Port Authority and RFI on the possible impact on the existing awarding contracts, that these contracts shall remain unaffected until their natural expiry.

SECTION II – Implementing steps

2.6. Measure 6 – Allocation of shunting locomotives owned by RFI

2.6.1 Summary of comments

Sent by	Measure	Subject
Dinazzano Po (Single Operator Ravenna in a temporary association with Serfer) -	06 Section II	Suggests regulating the procedures for any take-over by a new operator upon termination of the awarded service by providing for a takeover/redemption obligation so as to ensure the recovery of realized and non-amortized cost of the rolling stock purchased by the previous operator.
Dinazzano Po (Single Operator Ravenna in a temporary association with Serfer) -	06 Section II	Suggests that the infrastructure manager should make available deposits and premises to be used by the SO for its organisational needs (locomotive depots, locker rooms, etc.) and to fulfil the obligations associated with the working relationships with employees.
AssoFer	06 Section II	Considers of strategic interest to clearly identify the maintenance area, be it predictive, preventive or corrective on account of the critical issues in the functionality and conformity of rolling stock.
Quadrante Servizi	06 Section II	Requests to define the role of the SO in the implementation of the so-called "ancillary shunting", which can be requested by MTOs or rail siding owners.
Terminal Piacenza Intermodale	06.1	Requests to add the possibility to assign RFI's shunting locomotives also for hire (at competitive prices), in case with a repurchase agreement.
FerCargo	06.1	Requests to add the possibility to assign RFI's shunting locomotives also for hire (at competitive prices), in case with a repurchase agreement.
FerCargo	06.1	Considers that, in case of transfer of shunting locomotives, RFI should ensure to the SO full and non-discriminatory access to any documents which are necessary for administrative and safety purposes and to spare parts, so that the SO may have adequate assistance from RFI for maintenance and repair activities.
FerCargo	06.1	Considers that adequate documentation and spare parts should be made available in case of leasing, while the fees for recovering the costs incurred for locomotive adaptation by RFI may include legal interest distributed over 10 years.

Sent by	Measure	Subject
FerCargo	06.1	Highlights the need for ensuring continuity of shunting operations, given the complexity and high costs for operators to adapt safety systems (ANSF ¹ Decree no. 1/2015, system adaptation by 1 January 2018) concerning locomotives in use and to be assigned (ANSF extension?).
AssoFer	06.1	Requests to add the possibility to assign RFI's shunting locomotives also for hire (at competitive prices), in case with a repurchase agreement.
Captrain	06.1	Requests that, in case of transfer of shunting locomotives, RFI ensures to the SO full and non-discriminatory access to any documents which are necessary for administrative and safety purposes and to spare parts.
Captrain	06.1	In case of leased shunting locomotives, considers that RFI should ensure to the SO full and non-discriminatory access to any documents which are necessary for administrative and safety purposes and to spare parts, as well as adequate assistance for maintenance and repair activities. Rental fees will allow RFI to recover the costs incurred for locomotive adaptation exclusively through the application of a mark-up equal to the legal interest rate distributed over 10 years.
Unione Interporti Riuniti	06.1 c	Requests a specification of the take-over clause.
Quadrante Servizi	06.1 c	With reference to paragraph c of Measure 6, requests to specify what is meant by "take-over clause".

2.6.2 Assessment by the Authority

For a better specification of the "takeover clause", as requested by some participants in the consultation, it was clarified that this provision subordinates the transfer of ownership of the locomotives to the payment of an amount that allows the recovery of the investments made and not yet amortised by the person taking over at the end of the contract.

With reference to the proposal made by some participants in the consultation to provide for additional contractual terms such as leasing with a repurchase agreement, it was considered it unnecessary to amend the wording of the Measure as it already allows RFI to adopt arrangements for allocating locomotives other than those described, if they are considered to be more efficient.

Finally, a deadline was introduced for RFI's communication of the arrangements for allocating locomotives and their timing. This deadline was coordinated with that provided for by Measure 5 for the definition of ReCoMaF.

¹ Agenzia Nazionale per la Sicurezza delle Ferrovie (ANSF) is the Italian National Railways Safety Agency (TN).

2.7. Measure 7 – Term of contracted shunting operations

2.7.1. Summary of comments

Sent by	Measure	Subject
Serfer (Genova)	07.1	Considers it necessary to provide for an adequate duration of the service contract (at least 5 years), in order to ensure the sustainability of the investments required for the supply of the necessary assets for the performance of the service.
Dinazzano Po (Single Operator Ravenna in a temporary association with Serfer)	07.1	Proposes at least a 5-year duration of the shunting service, which is the minimum period for amortisation of the locomotive purchase cost and placing-in-service of a new vehicle.
AssoFer	07.1	Considers it appropriate that the minimum duration of the shunting contract be in line with the actual investments made by the stakeholders concerned.
Fercargo Manovra	07.1	Considers that the maximum limit of 5 years for the award of shunting operations is too short and prevents a real rolling stock improvement, since Measure 6 is not sufficient to ensure the necessary renewal of the shunting locomotive fleet which is currently available in Italy. Therefore, a period of no less than 10 years should be provided for.
Captrain	07.1	In the light of a desirable turnover of operators acting as SO in the different railway operating areas, including to ensure quality and efficiency of shunting operations, the duration of the contracted services should not exceed three years.
Quadrante Servizi	07.1	Requests to assess whether the maximum five-year term for contracts for the award of shunting operations is adequate, given the huge investments needed to adapt locomotives to ANSF rules.

2.7.2. Assessment by the Authority

The provision of a term ranging from 3 to 5 years seems to be a good balance between the need to ensure investment sustainability, as highlighted by some of the participating Single Operators, and the need emphasized by some railway undertakings - both in the Call for Inputs and in the consultation launched with ART's Decision no. 133/2016 - to allow new operators to entry the shunting service market.

In the light of the above it has been considered that Measure 7 needed not be modified.

2.8. Measure 8 (and former Measure 5.4.g) – Integrated scheduling of shunting services

2.8.1. Summary of comments

Sent by	Measure	Subject
Serfer (Genova)	08.2	Considers it necessary to identify a person with the role and function of coordinating the integrated scheduling of shunting operations among the parties to the M53 document of the "railway operating area".
Serfer (Genova)	08.2	The consolidated scheduling document for railway services should protect commercial confidentiality with respect to the traffic data of RUs and operators of the railway area.

Sent by	Measure	Subject
RFI	08.2	Requests that the planning document of the railway services in the M53 operating area be subject to the SO's approval and ensure consistency between such M53 document - which is exclusively drafted between SO and RU - and the infrastructural and traffic context of the railway junction or line where the facility is located.
AssoFer	08.2	In the advance planning of the estimate of the production capacity that may be provided by a facility, critical issues occurring in operational management should be taken into account in a predictive way, as the saturation level of the facility reaches its peak.
Fercargo Manovra	08.2	Requests to consider the integrated M53 as sufficient for the purpose of Measure 8, since the scheduling of the shunting period for the purpose of recovering capacity of the complex port and inland terminal systems frequently depends on factors which are exogenous to the rail component and the idea of rigidly regulating a small component of the supply chain (last mile) is likely not to occur in practice.
Quadrante Servizi	08.2	Requests to clarify whether the planning document referred to in Measure 8 may be the integrated M53 form of RFI.
Interporto Centro Italia Orte	08.3	For a better operation of infrastructures and equipment, a software monitoring/management is suggested to connect the assets with a single control room, including widespread adoption of sensor technology and computerised operation.
Unione Interporti Riuniti	08.3	Requests to standardise IT tools, including by making RFI's PICMOVE system available. PICMOVE should be promoted as the link between real-time traffic information in the network and the operational context of the railway operating area, where all railway undertakings are required to interface with their own traffic management systems, providing any relevant traffic data.
AssoFer	08.3	Requests to standardise IT tools, including by making RFI's PICMOVE system available. PICMOVE should be promoted as the link between real-time traffic information in the network and the operational context of the railway operating area, where all railway undertakings are required to interface with their own traffic management systems, providing any relevant traffic data.

2.8.2. Assessment by the Authority

Measure 8.2 provides that the planning document for inbound and outbound rail services and for the operations to be performed after arrival and before departure, currently named integrated M53 and prepared by RFI with the involvement of terminal operators, be also signed by the operators of the railway area, by the Single Operator and by the RUs concerned, with the aim of making any persons involved aware of their responsibilities in terms of compliance with the scheduled timetable, including in relation to the application of penalties.

In this respect, as suggested by Serfer during the consultation, it should be clarified that the arrangements for implementing this measure need safeguard the requirements of commercial confidentiality of the traffic data of each RU and operator of the railway area. This can be made e.g. through the submission by the IM to

RUs, Single Operator and operators of the railway area, and signing by the latter, of partial versions of the document containing the information falling within their respective responsibilities.

2.9. Measure 9 (and former Measures 5.4.h and 5.4.i.6) - Service Level Agreement (SLA)

2.9.1. Summary of comments

Sent by	Measure	Subject
Serfer (Genova)	09.1	Considers that any obligation to include in the contracts a provision on SLAs, with a level of penalties equal to at least 10% of the charge, implies additional costs for the SO which cannot be disregarded when determining the charge for shunting services.
Fercargo Manovra	09.2	Proposes that SLA indicators be published on the web yearly or at the most half-yearly in order to cut the administrative costs of SOs.
Quadrante Servizi	09.3	Requests to clarify whether a shunting service may be sold by the Single Operator to a MTO.
Terminal Piacenza Intermodale	05.4 h	Suggests adding a minimum annual guaranteed amount of traffic/shunting by the operators of the railway area, including penalties in case of non-achievement.
Serfer (Genova)	05.4 h	Considers it appropriate that penalties be provided in the contracts for the provision of shunting services, to be imposed not only on the SO, but also on operators of the railway area in relation to the fulfilment of their obligations under the contract, so as to promote continuous improvement in their performance.
FerCargo	05.4 h	In the interests of the RUs, the Service Level Agreement (SLA) should provide for objective quality indicators, targets in line with market requirements, penalties in the event of poor quality and right to withdraw the SO assignment.
AssoFer	05.4 h	Considers that, when identifying Key Performance Indicators (KPIs), indicators of the quality of shunting services should be provided. These cannot and shall not disregard factors concerning the production capacity and actual use of the facility itself, depending on length and number of tracks available for train composition, and railway shunting areas, on the one hand, and the operating model chosen for inbound/outbound traffic management and loading and unloading activities, on the other, as well as the availability of human resources and working shunting locomotives in a state of usage and obsolescence which is appropriate to the actual production level that is declared as deliverable, with always available stock, if necessary; possibility of sharing shunting locomotives with other facilities.
AssoFer	05.4 h	Considers that an indicator for the quality and effectiveness of the service provided, which the service operator proves in advance to be able to deliver, is the number of trains which are deliverable/delivered to the RU in the time unit of the analysis (week/month/quarter) with a delay of max. 15 minutes compared to the contracted HLR on the total number of trains that may be operated/have been operated in the time unit of the analysis.
AssoFer	05.4 h	Considers that contractual agreements should exclude any reversal onto the operator of incremental costs to increase the terminal productivity and its capacity.
AssoFer	05.4 h	Considers that operators of the railway area, or third parties, should be chosen on the basis of their capacity to ensure and encourage an operational synergy in the operation of the service facilities or rail siding facilities, including in order to satisfy the new approach of Regulation (EU) No 913/2010 on a European rail network for competitive freight.

Sent by	Measure	Subject
AssoFer	05.4 h	A minimum annual amount of traffic/shunting operations is to be guaranteed by operators of the railway area, with related penalties in case of non-achievement of the minimum amount.
Fercargo Manovra	05.4 h	A system of penalties should be implemented for application by the SO, concerning, for example, late payment by customers or other non-compliance under contractual terms, to be referred to in the contract.
DB Rail	05.4 h	Considers that, in the event of repeated qualitative shortcomings in the services provided or serious operating difficulties, it would be appropriate to provide for revocation of the assignment to the SO.
DB Rail	05.4 h	Suggests adding, as an additional proposal, that railway companies, Single Operator and operators of the railway area should regulate univocally, for each single traffic movement, the scope of commercial and vehicle liability for rail wagons movements and their transported goods, in particular in case of damage. This regulation is without prejudice to the liability of the operation which must be borne by the operator actually performing the shunting operations.
Captrain	05.4 h	Considers that the rules of procedure of the railway operating area should provide for the possibility for RUs to report delays, malfunctions and other irregularities in the provision of shunting operations to ART, which should initiate inquiries to assess whether the conduct of the SO, which the complaint refers to, results from the infringement of the duties of transparency, impartiality and non-discrimination required by the function performed.
Captrain	05.4 h	Proposes introducing a system for ART's assessment of the proper execution of the operations carried out by the SO, as well as the revocation of the awarded services for repeated breaches of the obligation of neutrality, transparency, impartiality and non-discrimination.
Captrain	05.4 h	Considers that SLAs should provide details of the performance offered (procedures and timing), objective quality indicators, targets in line with market requirements and penalties in case of non-compliance with the qualitative levels.
Quadrante Servizi	05.4 h	In defining SLAs, particular attention should be paid to time peaks and lows, as well as to any delay in the train arrival in the railway operating area.
Quadrante Servizi	05.4 h	Requests to consider, in the definition of SLAs, the rules on access to facilities (FIFO-LIFO), as well as any handling of dangerous goods (ADR-RID).
Quadrante Servizi	05.4 h	Requests to assess the role of the Railway Undertaking in terms of SLA and penalties, if this is considered as an operator of the railway area.

2.9.2. Assessment by the Authority

With regard to the proposal to introduce, in addition to the penalties on the SO provided for by Measure 9.1, penalties on the operators of the railway area or, in any case, on customers of the SO, the following is noted. As pointed out in the explanatory report annexed to Decision no. 133/2016, the awarding of a shunting operation to a single operator is an important indicator of the existence of a significant market power. In addition to justifying the regulatory measures aimed at ensuring the management efficiency of shunting operations, such as those contained in the present regulatory act, as well as the measures aiming at

regulating charges (Decision no. 96/2015, Measure 35 et seq.), this circumstance also makes it necessary to adopt measures aimed at protecting users against the risk of a sub-optimal level of the quality of the service provided. Further, it is important to note that in many facilities under consideration the Single Operator or the Operator of the shunting service is part of FSI Group (Terminali Italia, Serfer); noteworthy is also the associated risk of non-price discrimination practices against the RUs competing with Trenitalia.

The introduction of regulatory measures on SLAs, firstly by Measure 11.6.1 of Decision no. 70/2014 and later with the present regulatory measures, aims at protecting users and ensure equitable and non-discriminatory treatment under unfavourable market conditions, while it does not intend to regulate in detail the contractual relationship between the SO and the operators of the railway area or the users of shunting operations. It is therefore considered that in the contract governing the relationship between Single Operator and users of shunting services, it may be left to the parties themselves to introduce commitments and related penalties borne by the latter.

With reference to measure 9.2, the proposal submitted by an association of shunting operators to provide for a yearly or semi-yearly publication of SLA indicators on the web in order to contain administrative costs of SOs is not considered to be acceptable. It should be emphasized, as already pointed out in the explanatory report annexed to Decision no. 133/2016, that the implementation of a system that ensures service quality levels, such as that provided for in measure 9.1, implies constant data monitoring and continuous flow thereof between SO and users of shunting services. Compared to this burden, the monthly publication referred to in Measure 9.2 is of minor importance and basically does not imply additional costs to be borne by the SO.

With reference to the request by Captrain to establish that the rules of procedure of the railway operating area provide for the revocation for cause of the awarded services in case of repeated breaches of the obligation of transparency, impartiality and non-discrimination as assessed by the Authority, the general provisions of article 37 (2) and (9) of Legislative Decree no. 112/2015, entrusting the Authority with very wide powers of action, are considered to be adequate in this respect.

In the light of the above, it has been considered that Measure 9 needed not be modified.

2.10. Measure 10 (and former Measures 5.4.i.3 e 5.4.i.5) – Charging methods.

2.10.1. Summary of comments

Sent by	Measure	Subject
Fercargo Manovra	05.4 i	Considers that, rather than having a separate accounting reporting system for shunting costs, the SO should avoid administrative interference by third parties by showing its own costs for shunting operations.
Captrain	05.4 i	Notes that the charges applied by the SO for shunting operations should not exceed the charges in force in the last NS in which the shunting service was carried out by RFI, increased by the annual rate of real inflation.
Captrain	05.4 i	Notes that the power of the SO to provide for charge increases should not be arbitrary, but rather subject to publication by the SO. As required by the draft regulatory measures on charging of shunting operations, it should be proportional to the additional or specific performance requested by the railway undertaking and should not exceed the charge in force on the date of the last NS in which the shunting operations were provided by RFI.
Quadrante Servizi	05.4 i	With reference to the technical and economic conditions of the provision of shunting services, attention should be paid to the analysis of underlying costs, with particular reference to the costs for adapting rolling stock to ANSF provisions.
Quadrante Servizi	05.4 i	With reference to the methods for charge determination, given the reference to RFI price list in the 2012 NS, it would be necessary to take into account the system for charge determination of this list in terms of: (i) basic operating costs; (ii) costs related to Safety Management System; (iii) cost and upgrading of locomotives pertaining to the service; (iv) any discounts on excise duties relating to fuel supplies of the locomotives themselves; (v) incidence on costs of RFI's role as manager of the railway infrastructure capacity (path allocation).
Serfer (Genova)	10.1	Given the service peculiarity in each production unit, it is doubtful whether the assessment system of primary shunting may be applied to the charging modes for secondary shunting, in particular with respect to the performance provided for in Chapter 6.3.2 of the NS.
DB Rail	10.1	Suggests that the charge lists indicate separately the remuneration for primary shunting, secondary shunting and complete shunting, since the primary and secondary shunting pertaining to the same train are frequently charged to different entities.

2.10.2. Assessment by the Authority

Measure 10 aims at ensuring that the charging methods of shunting services are as uniform as possible so as to facilitate the comparison of the technical and economic conditions offered in the railway operating areas by service users.

Considering that, since RFI ceased to handle primary shunting, primary and secondary shunting in the facilities under consideration are managed in a unitary way by a single entity, Measure 10.2 further aims at encouraging the simplification of the contractual relations between Single Operators and service users. In this respect, the Authority is aware that, as noted by DB Cargo, primary and secondary shunting of the same train are frequently purchased by different parties: primary shunting service being usually purchased by RUs,

while secondary shunting services by terminal or logistic operators. However, ART does not intend to impose that charge lists continue to indicate separately the remuneration for primary and secondary shunting. Indeed, it is evident that in a context where both services are steadily carried out by the same entity and where the charging methods are made uniform as provided for by Measure 10.2, unitary charging may be justified by the need for simplification and reduction of administrative costs, without prejudice to the necessary compliance with the principle of equitable and non-discriminatory access to the service facilities and the services provided therein (Article 13 (2) of Legislative Decree no. 112/2015), with the possible self-supply of services (Measure 4.2) and with the principle that charges may be referred to "sets of services" only if they are offered to all users in a unitary way (Decision no. 96/2015, Measure 48, second paragraph). In the light of the above, it has been considered that Measure 10 needed not be modified.

2.11. Measure 11 - De facto Single Operator.

2.11.1. Assessment by the Authority

The measure at issue arises from the need to clarify the regulatory framework resulting from the failure to reach a decision, according to the procedures and terms under Measure 5, concerning the identification of the Single Operator and the definition of ReCoMaF. In these cases, as we have seen (cf. Measure 5), shunting services may be provided by parties other than the current Single Operators, including in favour of third parties. However, if the existing market structure is actually maintained, it is considered appropriate to impose the same principles and criteria provided under Measure 4.1., as well as the obligations relating to allocation of locomotives, quality and scheduling of the service and charging method as provided for in Measures 6, 8, 9 and 10, having taken into account, on the one hand, the evidence of insufficient competitive dynamics and, on the other, the complexity of the facilities subject to the regulatory measures and their strategic position in the national logistics system.

2.12. Measure 12 - Applicable rules

In the absence of any comments, Measure 12 (which was Measure 11 in the draft submitted to consultation) is wholly confirmed in its original wording.