



# **Guidelines concerning Non-RU Applicants**

**Version 1.0**

## Version control

<b>VERSION</b>	<b>AUTHOR</b>	<b>DATE</b>	<b>CHANGES</b>
0.1	RNE Project Group	2014-11-12	Creation
0.2	RNE Project Group	2015-01-20	Addition of Section 8
0.3	RNE Project Group	2015-03-19	Addition of Sections 7, 9 and 10
0.4	RNE project Group	2015-10-01	Revision of all sections
1.0	RNE project Group	2015-12-03	Approved by the RNE General Assembly

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## 1 Glossary/Abbreviations

Glossary/abbreviation	Definition
Applicants	As defined in Section 3 below.
Corridor Organisation	Governance structure of a Rail Freight Corridor (RFC) according to Article 8 of Regulation No 913/2010.
CID	Corridor Information Document according to Article 18 of Regulation No 913/2010.
Corridor OSS/C-OSS	A joint body designated or set up by the RFC for applicants to request and to receive answers, in a single place and in a single operation, regarding infrastructure capacity for freight trains crossing at least one border along the RFC (Article 13 of Regulation No 913/2010).
IM	Infrastructure Manager In this document, only the term Infrastructure Manager (IM) is applied. It refers to IMs and also – if applicable – to Allocation Bodies (ABs).
MB	Management Board of a RFC according to Article 8 (2) of Regulation No 913/2010.
Network Statement/NS	The statement which sets out in detail the general rules, deadlines, procedures and criteria for charging and capacity-allocation schemes, including such other information as is required to enable applications for infrastructure capacity (Article 3 (26) of Directive 2012/34/EU).
Non-RU Applicant	As defined in Section 3 below.
One-stop Shop/OSS	Either a joint body established by the IMs or one single IM involved in the train path crossing more than one network (Article 44 (4) Directive 2012/34). Applicants apply to an OSS for train paths crossing more than one network.
PCS (Path Coordination System)	A path coordination and allocation system for international passenger and freight rail transport designed, developed and operated by RNE.
Pre-arranged Path/s (PaP/PaPs)	A pre-constructed path on a Rail Freight Corridor according to Regulation No 913/2010. A PaP may be offered either on a whole RFC or on sections of the RFC forming an international path request crossing one or more international borders.
Rail Freight Regulation	Regulation (EU) No 913/2010 concerning a European rail network for competitive freight
RFC	Rail Freight Corridor. A Corridor organised and set up in accordance with Regulation No 913/2010.
RU	Railway Undertaking
Reserve Capacity (RC)	Jointly defined capacity for international freight trains running on the freight corridors, recognising the need for capacity of other types of transport, including passenger transport; this reserve is kept available within the IMs' final working timetables to allow for a quick and appropriate response to ad hoc requests for capacity (Article 14 (5) of Regulation No 913/2010)
TT	Timetabling / timetable

## 2 Background, scope and target group of this document

### 2.1 Background

In November 2010, Regulation No 913/2010 concerning a European rail network for competitive freight became a part of the legislative framework governing international rail freight in Europe. RNE, as a coordination platform for Corridor Organisations' Management Boards, took the initiative to provide the RFCs and their users with recommendations and guidelines concerning the functions that have to be set up and performed to meet the requirements of the Regulation. Accordingly this document was drafted by an RNE Project Group within the framework of the following RNE project: 'Harmonized way of handling Authorised Applicants', which first phase ran between August 2014 and September 2015.

### 2.2 Scope and target group

These guidelines provide recommendations for a harmonised way of handling non-RU Applicants on all Rail Freight Corridors (RFCs), considering the feeder/outflow paths. These recommendations might be used to handle non-RU Applicants on all international train paths, too.

These guidelines address all levels of RNE and its Members. They are also a supporting document for Corridor Organisations, Infrastructure Managers (IMs) whose infrastructure is part of a RFC, Railway Undertakings (RUs) and non-RU Applicants using international train paths.

With regard to different requirements of various RFCs, these guidelines provide a framework for a shared understanding of non-RU Applicants. Details may be different for each RFC/IM and subject to the decisions of the Corridor Organisations/IMs. Detailed information has to be provided by the RFC in their Corridor Information Document (CID) and by the IM in the Network Statement (NS).

### 2.3 EU law and RNE documents relevant for these Guidelines

- Regulation No 913/2010 concerning a European network for competitive freight
- Directive 2012/34 establishing a single European railway area (recast)
- RNE Guidelines for Pre-arranged Paths
- RNE Guidelines for Corridor OSS

## 3 Who is an Applicant? (i.e. who is allowed to request paths)

Taking the definition of the "Authorized Applicant" stipulated in the Regulation No 913/2010 and the definition of 'Applicant' in Directive 2012/34 into consideration, Applicants can be divided into two groups:

- **RU Applicants** – RUs and International groupings of RUs<sup>1</sup>
- **Non-RU Applicants** - other persons or legal entities with a public-service or commercial interest in procuring infrastructure capacity

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<sup>1</sup> If the International grouping of RUs is a legal entity, it is considered as a non-RU applicant. If the International grouping of RUs is not a legal entity, the grouping may request paths but only the RUs forming the grouping may be allocated the path.

## 4 Should the interest of non-RU Applicants be proven?

Neither Regulation No 913/2010 nor Directive 2012/34 (except Article 41 (2)) prescribes any means of investigation of an interest, therefore it is assumed that a non-RU Applicant with the intention to submit a request for a path has a valid public-service or commercial interest in procuring the given infrastructure capacity. However, in limited, exceptional circumstances<sup>2</sup>, the OSS/C-OSS working with the relevant IMs/ABs may make further enquiries to confirm the existence of a public-service or commercial interest.

## 5 Relations between OSS/C-OSS and non-RU Applicant

Before applying for the path/s a simple declaration of acceptance by non-RU Applicants of the conditions set out in the Corridor Information Documents (CIDs) of RFCs / Network Statements (NSs) of IMs and ABs is considered sufficient. According to the concept applied (see chapter 7 below), further contractual relations between the non-RU Applicants and the IMs can be applied.

## 6 Rights and obligations of non-RU Applicant towards the IMs/ABs and RFCs

### 6.1 Rights

- To request capacity
- To modify or withdraw the request
- To participate in coordination process in case of conflict
- To accept or refuse the alternatives offered by the OSS/C-OSS
- To accept or refuse the Draft Offer and the Final Offer
- To ask for modification or to cancel the allocated capacity
- To change the appointed RU/RUs

From a practical point of view, the above rights would be mainly exercised in PCS.

### 6.2 Obligations

- To use PCS after signing the PCS User Agreement with RNE in order to place requests for PaP or RC (obligatory) and/or for other international paths (depending on the rules of involved IMs/ ABs)
- To accept the CID/NS conditions (template now and tick-off function in the future provided in PCS)
- To change the allocated path parameters from the acceptance of the Final Offer on only according to the CID/NS conditions
- To pay fees – if any are requested
- To appoint the RU/RUs

## 7 How are non-RU Applicants handled?

The project group found two main approaches in Europe as regards the handling of non-RU Applicants after path allocation has been performed:

1. **'Non-transfer' concept:** the Infrastructure Manager and the non-RU Applicant conclude a Contract for the allocation of train paths on the national rail network, which is composed

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<sup>2</sup> This does not include the Netherlands where national law stipulates that the commercial interest has to be proven.

of General Conditions and Special Conditions. Even if they have appointed a RU to use the train path, non-RU Applicants retain all rights and obligations linked to this contract. So during the working timetable, they continue to manage the train paths (modification and cancellation of the train paths). To use the train path (running on the rail network), they conclude contracts with RUs by issuing calls for tender.

2. **'Transfer' concept:** with the appointment of a RU to run the train, all rights and obligations of the non-RU Applicant are transferred to the appointed RU and from this moment on the IM/C-OSS is dealing with the RU only.

Both concepts have pros and cons and every IM and RFC should apply only one of the above concepts in order to approach harmonisation.

## 8 Harmonised deadline for appointing a RU for the annual timetable and for the running timetable

It is recommended to have a harmonized deadline for appointing a RU along the whole international train path. From a timetabling point of view, there is no point in making any difference between the annual timetable and the running timetable, so the deadline could be the same.

Based on simplified process from the RNE Sales & Timetabling Working Group (see **Annex A**), the recommended number of days is **30 days** before the first operation day of allocated path(s) at the latest. Less number of days is not recommendable.

In case of change of the appointed RU, the non-RU Applicant shall make a new appointment also 30 days before the first operation day of the new RU at the latest (see **Annex B**).

The appointment of a RU means nomination by the non-RU Applicant of the RU/RUs duly notified to the IM.

In case of no valid appointment by the non-RU Applicant, the allocated capacity shall be considered cancelled, so that the given infrastructure capacity will not remain unutilized and will become available again for other interested applicants.

IMs may request the acceptance of the nomination by the RU/RUs as part of the appointment. In this case, the allocated capacity is considered cancelled if the nomination is not accepted by the RU before the deadline above.

The appointment of the RU by the non-RU applicant has to be carried out in PCS. Where requested by the IMs, the acceptance (or refusal) of the RU is also carried out in PCS.

## 9 Appointment of RU in the annual timetable and in the running timetable

A non-RU Applicant is entitled to appoint either one RU for the whole request of annual train path or several RUs, for every day of operation of the annual timetable. It may be recommendable that non-RU Applicant appoint RU/RUs for all days of operation of the annual timetable.

A non-RU Applicant is entitled to appoint different RUs for different requests and for different sections of a single international path in the annual timetabling process. With regard to safety and liability issues, the handover points from one RU to another should be clearly defined by the non-RU Applicant.

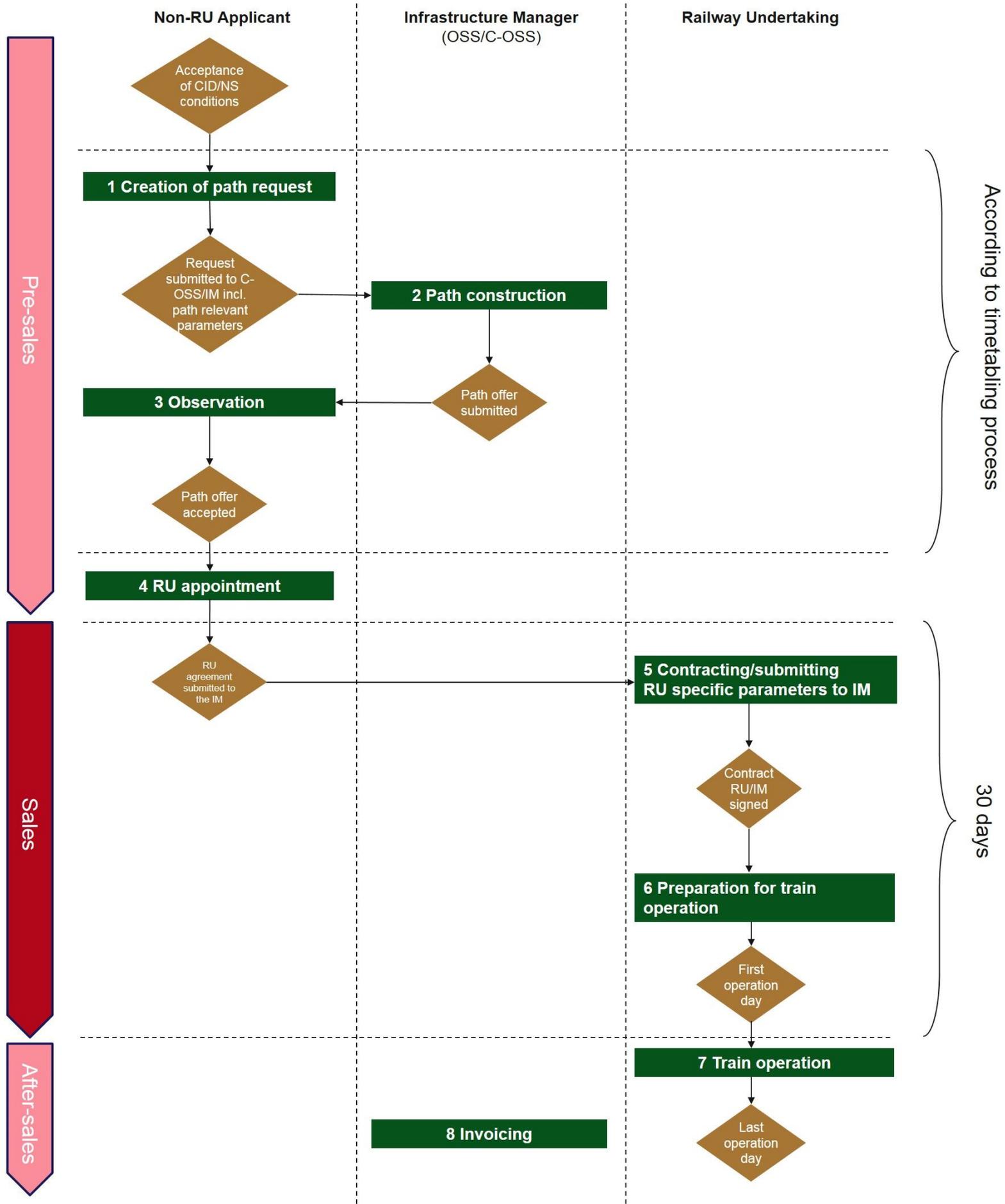
The same rules are applied in the running timetable accordingly.

## 10 Adjustments to PCS

RNE PCS should be adjusted to handle the non-RU Applicants, in particular by adding new functions as follows:

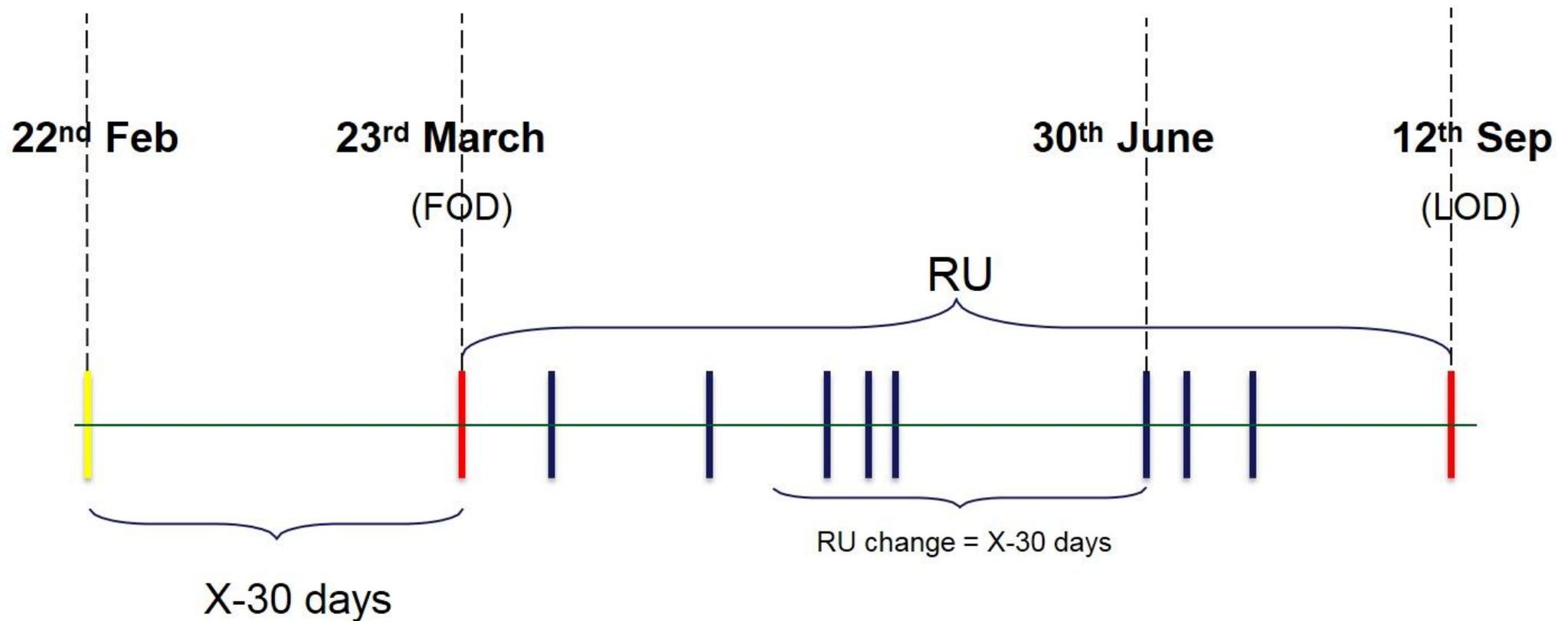
- role of non-RU Applicant in the timetabling process in general
- acceptance of Corridor Information Document / Network Statement
- appointment of RU (nomination by non-RU Applicant)
- (optional) notification sent to the nominated RU, so that the RU will be informed that it has been nominated by a non-RU applicant
- (optional) acceptance of nomination by RU
- (optional) notification sent to the non-RU Applicant and IM/IMs concerned, so that both will be informed that RU has been accepted the nomination
- (optional) refusal of nomination by RU
- (optional) notification sent to the nominated RU (RUs) in case of changed /cancelled nomination by the non-RU Applicant

# Annex A - Simplified process for non-RU Applicant



# Annex B – X-30 Day Rule Application

(Please note that all dates below are chosen at random)



## Notes:

1. The RU should be appointed for all running days from 23<sup>rd</sup> March to 12<sup>th</sup> Sep already on 22<sup>nd</sup> February at the latest.
2. In case of change of the appointed RU, the non-RU applicant shall make a new appointment also 30 days before the first running day of the new RU (30<sup>th</sup> June above) at the latest.

## Legend:

FOD = First Operation Day

LOD = Last Operation Day

RU = Railway Undertaking