

## **The CNMC considers that the fines envisaged in the future Railway Sector Law for companies in breach of the law are insufficient**

- The CNMC will be able to fine companies that fail to comply with its rulings up to a maximum of 300,000 euros.
- In Italy, France and the Netherlands, their regulators impose fines of up to 2%, 3% and 10% of the companies' annual revenues, respectively.
- The Single European Railway Area Directive requires regulators to have sufficient sanctioning capacity.

**Madrid, March 29, 2022.-** The CNMC has published its report on the draft bill modifying the penalty regime of the Rail Sector Law. Spain is currently in the midst of a passenger transport liberalisation process, with two companies (Renfe and Ouigo) competing in the Madrid-Barcelona high speed corridor, with a third (Iryo) soon to join them. ([IPN/CNMC/054/21](#))

[Directive 2012/34/EU](#) establishes that rail regulators must have sufficient sanctioning capacity to enforce their resolutions and information requests. However, the maximum fine that the CNMC can impose, according to the Rail Sector Act, is only 6,300 euros.

The CNMC has repeatedly pointed out that this amount is insufficient to deter companies from being sanctioned and that it did not comply with European regulations.

### **Maximum of 300,000 euros**

The forthcoming regulation sets the maximum fines that the CNMC may impose at 100,000 euros for failure to comply with its requests for information, and 300,000 euros for failure to comply with its rulings. Both are an improvement on the current situation (6,300 euros), but are still insufficient to have a deterrent effect on companies.

Moreover, they are much lower when compared to the maximum fines that can be imposed by other European rail regulators, or to fines in other sectors, such as energy or airports, which are also supervised by the CNMC.

For this reason, the CNMC considers that the most effective approach is to define maximum penalties in terms of a percentage of the offending companies' revenues, as in the case of Italy, where penalties can be up to 2% of the company's annual

revenues; France, where they can be 3%, and the Netherlands, where they can be as much as 10%.

In the case of the energy sector, which is also supervised by the CNMC, the fine for a very serious infraction cannot be less than 6 million or more than 60 million, and for serious infringements the fine varies between 600,000 and 6 million euros. In the airport sector, very serious infractions for non-compliance with CNMC rulings are between 250,000 euros and 4.5 million euros.

### **Penalties for delays**

On the other hand, the Draft Bill also modifies the sanctioning regime applicable to the suppression or delay of train movements, so that commercial service providers may be sanctioned, not only those subject to public service obligations, as has been the case to date.

The CNMC considers that these new infractions should be assessed together with the penalties and compensation already faced by railway undertakings according to other current regulations, such as those on incentives in the system of charges for the use of railway infrastructure.

Finally, the draft bill introduces two new serious infractions for non-compliance with the provisions of two European regulations: the 2016 regulation on capacity allocation and the 2017 regulation on railway service facilities, both of which are supervised by the CNMC.

The Commission considers that classifying the two new infractions will improve the effectiveness of its oversight. However, breaches of other reporting obligations provided for in the Rail Sector Law itself should be included as infractions.

[\(IPN/CNMC/054/21\)](#)