

## **Independent Regulators' Group – Rail**

### **IRG-Rail**

### **Working Programme 2016**

**11-12 November 2015**

IRG-Rail is the network of independent rail regulatory bodies from 26 European countries. The overall aim of IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railways market in Europe. IRG-Rail acts as a platform for cooperation, sharing of best practice on regulatory issues and promotion of a consistent application of the European regulatory framework.

This IRG-Rail paper is published on the responsibility of the IRG-Rail plenary. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the governments of its Member States.

## **I. Introduction**

1. International cooperation in railways is becoming increasingly important. It already exists between both railway undertakings and infrastructure managers, through their participation in European railway associations and fora.
2. Intensifying cooperation between national independent Rail Regulatory Bodies is also important in order to promote sustainable and effective competition in the railway sector and contribute to the development of a genuine European internal rail market. This can be achieved by fostering a consistent approach to the regulatory framework for railways in Europe, developing regulatory best practice, and speaking to stakeholders at the Community level with a single voice.
3. In June 2011, IRG-Rail was founded in The Hague by 15 independent Regulatory Bodies. Now the group has grown, and consists of Regulatory Bodies from 26 European countries. It has already become an important player, recognized by key stakeholders including the EU Institutions and sector organizations. Through the publication of several position papers, input into legislative proposals, and harmonized regulatory principles and practices, IRG-Rail has already proved its capability and efficiency.
4. The 2016 working programme of the IRG-Rail intends to continue this successful start and seeks to further enhance its position in the railway sector. In 2016, IRG-Rail will continue to focus on the needs of passenger and freight customers, the promotion of competition, and improvements in rail performance and efficiency.
5. The group will continue to develop the constructive relationships with European institutions and sector representative groups that have been already been developed over the past years. IRG-Rail's cooperative relationships with other Regulatory Bodies and other rail organizations, such as CER, EIM, ERFA, EPTO, UNIFE, RNE and UITP, will continue to be pursued wherever such cooperation is in the interest of rail customers and the promotion of competition.
6. As in 2015, the working programme for 2016 will be based on the two following priority areas:
  - promoting and improving harmonization;

- addressing emerging challenges.
7. The first priority area focuses on the principal aim of IRG-Rail: enhanced cooperation among Regulatory Bodies and further improved harmonization.
  8. The second priority area addresses challenges stemming from changes in the institutional environment.
  9. Potential topics for both areas include: proposals on how to handle/implement the freight regulation in practice, further harmonization in the field of market monitoring, common approaches on charging issues, and input to legislative developments such as the ongoing Fourth Railway Package negotiations. Work, outlined below, will be carried out by four thematic working groups and two sub-groups.
  10. An Advisory Steering Group has been set up to serve as an advisory group to accompany the IRG-Rail's present and future development. This group will continue to monitor the European agenda and set priorities for IRG-Rail work as necessary.

## **II. Working programme 2016**

### **1. Improving harmonization**

11. IRG-Rail has an important role when it comes to developing a consistent regulatory practice across Europe. Passengers and freight customers and market players rely on a consistent and harmonized application of the regulatory framework in order to be protected and compete on the same basis across Europe.
12. Separate working groups have been established to explore various issues in order to promote improved regulatory arrangements. An overview can be found in annex 1. The activity of these working groups will be pursued as follows:

### **ACCESS WORKING GROUP**

#### **Activity 1 - Rail Freight Corridors and Access to infrastructure**

##### **Rail Freight Corridors**

13. A focus of the work of the Access Working Group is the development of freight corridors in accordance with the regulation concerning a European rail network for competitive freight ((EU) No 913/2010 (the Regulation)). The Regulation sets out rules on, for example, the selection, organisation and management of the

freight corridors. First experience can be taken into account at this point in time, as six of these corridors have been operating since November 2013. More corridors will start from November 2015 and additionally some corridors will be extended. IRG-Rail will be involved in the regulatory tasks which come along with the implementation of those corridors such as creating common approaches to corridor regulatory issues.

14. Furthermore the European Commission is working on a revision of the Regulation. The Working Group Access has already prepared a position paper ahead of this proposed revision of the Regulation in 2015 in which important issues were identified as well as challenges and areas of (potential) concern within the scope of the Regulation. The Group will follow and support future development of the revision process in order to provide input for the EU Commission. Next to the harmonisation of the allocation process a key issue will be to further integrate the terminals in the rail freight corridor procedures.

Issues to be addressed:

15. IRG-Rail will:
  - closely follow the on-going negotiation process on the revision of the Regulation and provide further input on regulatory perspectives;
  - discuss regulatory tasks and powers regarding the framework for capacity allocation on freight corridors and monitor the negotiations on a harmonised framework for capacity allocation
  - monitor the implementation of the remaining corridors and other corridor issues (in particular coordination of works between infrastructure managers); partly this work will be done at corridor level. Input from these corridor groups will be given to the WG Access

Deliverables:

16. IRG-rail will:
  - provide regulators' input to the development of the revised Regulation,
  - report on progress of corridors and any relevant regulatory issues.

**Access to infrastructure**

Background

17. Regulatory bodies are in charge of monitoring access to infrastructure. This involves overseeing capacity allocation, traffic management, coordination of engineering works, performance regime etc.

Issues to be addressed:

18. Members of IRG-Rail have an opportunity to exchange information about their national practices and are envisaging benchmarking the following items:

- Review of coordination process of engineering works
- Review of performance regimes

Deliverables:

19. IRG-rail will:

- organise workshop and / or surveys as necessary (as agreed by the IRG-Rail plenary)
- report on any relevant regulatory access issues

**SUB-GROUP ACCESS TO SERVICE FACILITIES**

**Activity 2 - Access to service facilities: transparent and simplified access to service facilities**

Background:

20. The Sub-group Access to Service Facilities has drafted position papers concerning the upcoming implementing act of Directive 2012/34/EU dealing with service facilities. The main focus of the Sub-group Access to Service Facilities during next year will continue to be the work on the implementing act of Directive 2012/34/EU. This work is driven by the ideas and further steps of the Commission. The Commission has postponed work on the implementing act until the governance issues in the 4<sup>th</sup> Railway Package have been resolved.
21. Furthermore the subgroup will survey the transposition of the Recast into national law regarding the definition of the terms “infrastructure”, “infrastructure managers”, “service facility” and “operator of the service facility”. This serves as a preliminary step for finding a common understanding of the definitions and making it possible to use the terms uniformly throughout the work of IRG-Rail.

Issues to be addressed:

22. IRG-Rail will:

- contribute to the development of the Commission’s implementing act on service facilities;
- review governance aspects of service facilities.
- Survey the transposition of the recast into the national law regarding the definition of the terms “infrastructure”, “infrastructure managers”, “service facility” and “operator of the service facility”.

- Organise a workshop about service facilities

Deliverables:

- Subject to the progress of the Commission's policy on service facilities and the emergence of a draft proposal for the implementing act, the working group may further develop a position in the coming year.

**2. Emerging challenges**

**EMERGING LEGISLATIVE PROPOSALS IN THE RAIL SECTOR WORKING GROUP**

**Activity 3 – Providing input to European legislative proposals**

Background:

23. The European Commission published a proposal for a Fourth Railway Package in January 2013, addressing essential issues like liberalisation of domestic passenger market, further separation and a clearer definition of infrastructure managers' functions or a more effective approach to interoperability and cross acceptance to create a technical level playing field including a reform of the European Rail Agency.
24. Regulators' expert knowledge gives valuable support for legislators to design the proposed or upcoming provisions such that they are feasible in practice in order to achieve the aim of establishing a competitive environment for all market players, safeguarded by independent, strong and credible national regulatory bodies.
25. With view to the implementation of the Recast of the First Railway Package the European Commission is working on the development of secondary legislation, to which this Working Group provides input, unless proposed legislation covers specific issues which fall under the remit of another other IRG-Rail Working Groups, such as charging or access issues.
26. Although Member States had to implement the Recast of the First Railway Package by 16 June 2015, some national legislative procedures will only enter into force in 2016.

Issues to be addressed:

27. IRG-Rail will:
  - closely follow the on-going negotiation process on the Fourth Railway Package and provide further input on the development of the market pillar as necessary;

- monitor and provide input on the development of implementing acts as proposed by the European Commission, in particular implementing act on decision making by regulatory bodies;
- review the progress of transposition of the First Package Recast in Member States; and address common concerns of implementation if appropriate
- follow the discussion of the European Rail Regulatory Body

Deliverables:

- develop position papers on various regulatory aspects or topics(eg. rolling stock) of the Fourth Railway Package as required;
- develop position papers on the Commission's secondary legislation proposals to the Recast as appropriate and provide factual input on further implementing measures to the Recast, and in particular in relation to Regulatory Bodies principles and practices for making decisions.
- review key issues of Recast implementation as necessary

**CHARGES WORKING GROUP**

**Activity 4 - Developing common approaches to charging issues**

Background:

28. Directive 2012/34/EU on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure requires Regulatory Bodies to ensure non-discrimination on the railway market and in particular check whether charging principles are properly applied and whether separation of accounts is fully respected. The First Package Recast extends the competencies and functions of regulatory bodies to ensure proper oversight of charging

Cooperation of regulatory bodies on charging issues is aimed at facilitating the development of common principles and practices for making decisions, as foreseen by the Recast.

IRG-Rail will seek to develop a common understanding of charging principles across the European rail sector and will look into recommendations based on European legislation and taking into account national practices.

Issues to be addressed:

29. IRG-Rail will:

- explore and exchange information on general charging issues, e.g. charging principles for the use of infrastructure, incentive regulation;
- seek to develop a common understanding of a regulatory approach to examine cost components and composition of infrastructure charges;

- seek to develop common understanding of a regulatory approach to assess direct costs;
- seek to develop criteria to assess current mark-ups, market segments and the capability of the market to bear them as provided under article 32.1 of Directive 2012/34/EU;

Deliverables:

- Updated version of the of current charging applications for the use of infrastructure (introduction of new developments related to the impact of public compensations on charges and the role of regulatory bodies in respect of new investments);
- Position paper on market segment definition and criteria for assessment of mark-ups;
- Guidelines for the calculation of direct costs in respect of implementing regulation 2015/909.

**SUB-GROUP CHARGES FOR SERVICE FACILITIES**

**Activity 5 - Review of service facilities charging**

Background:

30. To get an overview of general European charging practices for service facilities and seek for common practices in terms of service facilities' charging.

Issues to be addressed:

31. IRG-Rail will:

- seek a common understanding of the prescriptions described by the European directive regarding charges principles for service facilities and develop a common position on notions related to service facilities' charging (e.g. in Art. 31.7 of the directive 2012/34/EU: what does the cost of providing a service correspond to? How to define the level of a reasonable profit?);
- share key issues on service facilities charges, and enhance cooperation by conducting common analysis on key issues and develop a document that provides an overview of European charging practices for service facilities.

Deliverables:

32. To report on service facilities charging:

- Update of the Overview on charging principles for passenger stations in Europe
- Development of an Overview on charging principles for all service facilities (except passenger station) in Europe.

### **3. Identify and monitor key European strategic initiatives**

#### **MARKET MONITORING WORKING GROUP**

##### **Activity 6 – Market monitoring**

###### **Background:**

33. Rail market monitoring is an important instrument for setting direction to the activities of the Regulatory Bodies and stimulating market participants to improve their activities. Regulatory Bodies have a formal duty to monitor competition in rail services markets. The First Package Recast provides for increased reporting activities at both the European and national level. At the same time, the European Commission monitors the development of the rail market in Europe through its rail market monitoring reports every two years and PRIME, the Platform for Rail Infrastructure Managers Europe, develops common key performance indicators.
34. Cooperation of Regulatory Bodies on market monitoring is aimed at increasing comparability of national rail monitors, enhancing national monitoring by sharing experiences, and increasing knowledge of the European rail market.

###### **Issues to be addressed:**

35. IRG-Rail will:
- finish the Fourth IRG-Rail market monitoring report and prepare the fifth IRG-Rail market monitoring report,
  - follow the implementation of the RMMS implementing act (Article 15 of Directive 2012/34/EU),
  - deliver sample survey questions for the consultation of users of freight and passenger rail transport services, and
  - keep contact with the European Commission and PRIME to build on further existing indicators and definitions and the development of rail market monitoring in general.

Deliverables:

- Publication of the fourth IRG-Rail market monitoring report in early 2016;
- If necessary, publication of another position paper on the RMMS implementing act;
- Workshop on the impact of the Recast implementation on market monitoring.

**ADVISORY STEERING GROUP**

**Activity 7 - Manage activity of Advisory Steering Group**

Background:

36. IRG-Rail wants to be regarded as an easily accessible, credible, professional and proportionate organisation in the eyes of our key stakeholders, the wider industry, the media and wider public. It seeks to identify and discuss forthcoming European issues at an early stage and be proactive in influencing emerging initiatives before strategic decisions are made at the European or national level. In order to facilitate timely and efficient communication on key strategic issues and to create continuity, a steering committee serving as an informal Advisory Steering Group at senior working level has been set up. This group consists of representatives of Regulatory Bodies of the current, previous and next chair of IRG-Rail in particular. Members of other regulatory bodies can also participate.

Issues to be addressed:

- proactively encourage membership of IRG-Rail for all independent Regulatory Bodies;
- proactively monitor the European agenda;
- identify key regulatory and strategic issues likely to impact on IRG-Rail;
- act as central contact point for strategic issues and advices;
- have an evaluation of processes and the effect of input of IRG-Rail when papers have been published. What's is done with the papers after they are adopted?
- work as a collective up-to-date conscience regarding regulatory issues.
- Organize a meeting with the Organization for Cooperation of Railway's (OSZD)

*Deliverables:*

- Workshop(s) on regulatory best practices for IRG-Rail members involving the relevant working groups.

## Annex

### Working Groups and Sub- Groups

	<b>Name</b>	<b>(Co-) Chaired by</b>	<b>Contact person</b>
1	Access	Bundesnetzagentur	Wolfgang Groß
	<i>Sub-Group</i> Access to Service Facilities	Bundesnetzagentur ACM	Christian Wolff Coen Timmerman
2	Market Monitoring	ARAFER	Aude LeLannier
3	Emerging Legislative Proposals in the Rail Sector	Bundesnetzagentur ORR	Andrea Sanders-Winter Agnès Bonnet
4	Charges	ARAFER	Miguel Amaral
	<i>Sub-Group</i> Charges for Service	ARAFER	Alexandra Hassler
5	Advisory Steering Group	Representative of IRG-Rail Chair	Michał Jaworski Edyta Rojek