

**Independent Regulators' Group – Rail**

**IRG-Rail**

**Charges Working Group**

**Position paper**

**on the forthcoming implementing act on the modalities for the  
calculation of the cost that is directly incurred as a result of  
operating the train service**

**Plenary Meeting**

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## I. Introduction

1. On 10 July 2014, the European Commission (“the Commission”) introduced a discussion paper on the ‘modalities’ for the calculation of the cost that is directly incurred as a result of operating a train service. In October 2014, the Commission introduced a revised version of the discussion paper for the SERAC subgroup of 29 October 2014. IRG-Rail understands that this discussion paper forms a draft for the future implementing act that infrastructure managers will have to comply with when calculating the costs directly incurred as a result of operating the train service as referred to in Article 31(3) of Directive 2012/34/EU (“the Directive”).
2. IRG-Rail strongly supports some of the changes that have been introduced in the revised version of the discussion paper, as they are consistent with the position papers already adopted by IRG-Rail on direct cost calculation.
3. In order to express its remaining concerns, IRG-Rail has provided in this paper:
  - I. general comments and requests;
  - II. specific comments on sections of the Commission’s proposals that could have serious impacts on charges;
  - III. suggested amendments directly to the Commission’s paper in Annex.

## II. General comments and requests

4. IRG-Rail supports the promotion of a liberalised market for the operation of train services. It also supports setting out a consistent set of principles across Member States on direct costs and agrees that there is a benefit in helping some Member States which do not already have a sophisticated charging regime to design an appropriate methodology, so that their regimes will be consistent with these agreed principles. The Commission’s latest discussion paper goes some way to achieve this.
5. IRG-Rail would ask the Commission to express the **explicit objectives** they are hoping to achieve with this implementing act so that it can more helpfully respond to what the most appropriate content of the implementing act would be. For example, the implementing act should require that **direct costs are clear and transparent** and that the **methodology for their calculation is objective and robust**. Charging principles of the infrastructure manager should also aim at providing incentives to the infrastructure manager to **reduce costs and manage the infrastructure efficiently**.
6. IRG-Rail strongly welcomes the introduction of the possibility to use **top-down econometric approaches that are already implemented in practice by some Member States**. IRG-Rail strongly urges the Commission to consider the introduction of the possibility to use bottom-up engineering methods, too, as **they are also able to provide robust estimates of direct costs**. Both methods are tried and tested methodologies, which are consistent with providing proper price signals that provide incentives for efficient costs, efficient use of the network and allow cost recovery. IRG-Rail believes, however, that the implementing act should focus on setting out the key principles and objectives for the methodology of calculation of direct costs and what charges should be attempting to recover rather than entering into a detailed description.

7. IRG-Rail wishes to insist on the fact that it is essential that there is a flexible approach, leaving the opportunity for Member States to:
  - a. maintain or develop a structure consistent with the Commission's objectives but which allows IRG-Rail members to pursue policies which reflect domestic concerns; and
  - b. establish the efficient level of direct costs according to a methodology which, in some countries, is already in line with the objectives of the Directive.

### **III. Specific issues related to the Commission's discussion paper of October 2014**

8. IRG-Rail supports the view that the Commission should set the objectives and principles of what these charges should be attempting to recover **but not provide exhaustive lists on the adjustments of direct costs, nor on cost elements that must be excluded from direct costs (Articles 4.1 and 5.2).**
9. In this sense, the introduction of the idea that adjustments (*i.e.* the "*modulations*" in the discussion paper of the Commission) of direct costs can be made according to any "*parameters where the infrastructure manager is able to demonstrate to the regulatory body that values for each such parameter, including variation to each such parameter where relevant, are objectively measured and recorded*" (Article 5) is strongly welcomed.
10. Continuing in the same vein, IRG-Rail supports the view that costs related to "**handling requests for railway infrastructure capacity**" **should not be considered as non-eligible costs** (Article 4) and that **part of maintenance and renewal costs should be considered as being direct costs.**
11. The **list in Article 4, paragraph 1** on what costs should be excluded from direct cost charges is flawed. For example, it excludes some costs such as electrical asset costs for which there is robust evidence to support they vary with traffic. Besides, some cost categories included in this list, such as "*time related depreciation*" or "*costs related to acts of God*", are unclear. As a precaution, IRG-Rail believes that these cost categories should not be included in the list unless they can be further clarified.
12. However, IRG-Rail wishes to underline that the specificities of the lists in Article 4 and Article 5 create ambiguity over how costs attributable to the operation of the train service not mentioned in this paper should be treated. Furthermore, Article 5, paragraph 1l) and 1m) directly contradict the Directive. These items should be charged at cost directly incurred as a result of operating the train service as they are part of the minimum access package.
13. For all cost elements, the infrastructure manager should have the flexibility to charge for any costs attributable to the operation of the train service and the burden should be on the infrastructure manager to produce evidence and justify this to the regulatory bodies. This should be a requirement clearly set out in the implementing act.

### Threshold levels

14. The infrastructure manager is required to set charges based on the cost directly incurred and provide the necessary information for the regulatory body to be able to check that charges are compliant with the legislation. Introducing **threshold levels** such as, “*up to 10% of the costs of signallers employed*” is not needed as this may not reflect the cost directly incurred by the infrastructure manager.
15. The introduction of these types of thresholds assumes implicitly that **an infrastructure manager has an incentive to overstate costs**. Depending on how the infrastructure manager is funded, this is not necessarily the case. Furthermore, in Member States where the infrastructure manager has an incentive to overstate costs, **a threshold has the potential to cause perverse incentives** to use that threshold value in all cases, even where the direct infrastructure costs are lower in reality. This would also work against the Directive’s requirement **to improve efficiency and reduce costs** over time.

### Simplified checks

16. IRG-Rail members welcome the introduction of **simplified checks** such as those expressed in Article 6 of the implementing act. It should be stressed however that **these checks should remain optional**, as currently foreseen now. Besides, in order to appropriately apply values of simplified checks, it should be clarified how to apply the €2 threshold for heavier or lighter trains.
17. The role of the regulatory body is to check that the charging principles of the infrastructure manager comply with those laid out in the Directive. This requires ensuring that direct costs only include cost elements attributable to the operation of the train service. **The regulatory body in each Member State needs to be involved in an appropriate way.**

### Cap at 20% increases (or more than 30% in three consecutive years) in a year for a particular train service

18. **Article 7, paragraph 1**, detailing the provisions to be respected when charges for a particular service increase by 20% (**or more than 30% in three consecutive years**) has been positively amended. IRG-Rail welcomes the option for the regulatory body to impose a ‘phase-in’ period in provision c). However, it is unnecessary to restrict the phase-in to 3 years. If the increase is very large, the regulator should be able to allow for a longer phase-in period. Besides, 20% (or 30% in three consecutive years) is an arbitrary percentage level and if charges happen to be very low for a particular service, they will not represent a significant increase in absolute costs.

### Charging unit

19. With respect to the charging unit, IRG-Rail strongly supports the introduction of the possibility for using either train-km or (gross) ton-km where appropriate. Indeed, for wear and tear-related track costs, train-km may not reflect precisely how costs are incurred. It could be more cost reflective to compute the charge directly on a (gross) ton-km basis. However, some costs are more accurately estimated on a vehicle-km basis. In particular,

**IRG-Rail (14) 17**

for wear and tear related track costs, the different vehicles that make up the train are what causes the damage to the track and therefore, costs may be incurred in this way. **It is important that charges should be levied in a unit consistent with how the cost is incurred unless it can be justified why this is not possible.**

**Review period**

20. Article 7, paragraph 2 includes a five year limit to the review period. IRG-Rail welcomes the introduction of the possibility to extend the review period by up to three years, depending, in particular, on the experience of the regulatory body with respect to charging review. Removing this option for the long term may indeed prevent regulators from being able to improve incentives for investments and innovation in the future.