

**Methodology and criteria for assessment of new international  
passenger services**

**Assessing the principal purpose of cross-border services:  
Summary of current practice and areas for regulatory cooperation**

## **1. Introduction**

- 1.1 Directive 2007/58/EC<sup>1</sup> of 23 October 2007 on the liberalisation of passenger services was published in the Official Journal of the European Union on 3 December 2007 and had to be transposed into domestic legislation by 4 June 2009. This Directive also includes changes to Directives 91/440/EC and 2001/14/EC.<sup>2</sup>
- 1.2 It opens up the market in international passenger services from 1 January 2010. Subject to certain tests, international operators are also permitted to pick up passengers at any station located on the international route and set them down at another, including stations located in the same member state (known as 'cabotage'). These tests are to be developed and undertaken by Regulatory Bodies:
- the "principal purpose" test is compulsory in the sense that it has to be transposed into national legislation by all Member States. This test consists of demonstrating the international nature of the service being proposed. This test must be concluded at the formal request of an interested party.
  - the "economic equilibrium" test is optional and is subject to Member States' decision whether to implement it or not. This establishes whether the economic equilibrium of existing public service contracts is compromised by any cabotage rights for an international service. IRG-Rail has already published a position paper on the economic equilibrium test<sup>3</sup>, setting out the method, criteria and procedures that IRG-Rail members expect to follow. As provided under Directive 2007/58/EC, guidelines will be developed progressively and criteria will be updated when necessary to reflect market developments
- 1.3 This paper concerns the principal purpose test. The objectives of the paper are to:
- offer an overview of current practice,
  - identify where there is scope for recommending common processes and criteria that Regulatory Bodies apply,
  - provide a view on how the principal purpose test should be conducted,
  - recommend procedure for cooperation between Regulatory Bodies, and
  - highlight areas of potential clarification.
- 1.4 This document should not be interpreted as committing Regulatory Bodies to making a particular decision. It may be revised and reissued from time to time to take account of further experience and changing circumstances.

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<sup>1</sup> Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure. The text of the Directive can

be found at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0044:0050:EN:PDF>

<sup>2</sup> Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.

<sup>3</sup> <http://irg-rail.eu/app/download/5782829402/2011-11-29+IRG-Rail+Guidance+Paper+Economic+Equilibrium.pdf>

- 1.5 It is important that regulatory frameworks are transparent and non-discriminatory. IRG-Rail supports the aim of having clear processes that are as straightforward as possible for applicants to follow, and which facilitate a timely and efficient consideration of each case. Regulatory Bodies will consider every case on its own merit, building on precedents and taking into account previous decisions when appropriate.

## **2. Overview of current practice**

- 2.1 Directive 2007/58/EC (article 1.8) states that the Regulatory Bodies alone are responsible for determining whether the principal purpose of a service is to carry passengers between stations located in different member states. In doing so, the Regulatory Body must act independently. The test must be conducted at the request of an interested party, including the candidate operator, i.e.: not on the Regulatory Body's own initiative.
- 2.2 This test is applicable in all European Member States. Details of practices in place within IRG-Rail countries are provided in Annex 3 and 4.
- 2.3 European legislation does not prescribe in detail how the principal purpose test is to be conducted. In a number of areas, member states are given discretion in implementation and interpretation, and have the necessary flexibility in applying the legal requirements to the individual circumstances of their rail market, or the service in question. Some areas that, we believe, would benefit from clarification are outlined in section 5 below.

## **3. Procedure overview**

### **General**

- 3.1 In the view of IRG-Rail, EU legislation suggests a process of distinct stages: notification, formal request, and decision.
- 3.2 Some of these stages may be combined in accordance with domestic legislation. For instance the formal request stage may be triggered automatically by notification of a proposed new international service. This is the case, for instance, in Germany.
- 3.3 IRG-Rail recommends that a member state's assessment method and criteria for principal purpose should be published on the website of the relevant Regulatory Body. Nevertheless, we acknowledge that the position of IRG-Rail and the methodology of individual Regulatory Bodies will evolve over time in the light of experience gained and market developments and as cases arise.
- 3.4 An overview of the procedure is shown on the flowchart in Annex 2.

### **Notification of a new service**

- 3.5 Under article 2 of Directive 2007/58/EC, a railway undertaking with an intention to operate a new international service (the candidate operator) must inform the infrastructure manager and the Regulatory Body of its intention to request infrastructure capacity.
- 3.6 EU legislation does not set out how the candidate operator must notify its intention and as a result notification processes tend to vary across Europe in accordance with domestic legislation.

- 3.7 IRG-Rail recommends that, subject to the existing arrangements in Member States,, candidate operators wishing to operate an international service submit a formal notification to the Regulatory Body of each member state in which they wish to operate. To this effect, IRG-Rail has developed a model form clarifying the type of information required at this stage. A copy of the form can be found at Annex 1. Additional information may be requested at the discretion of the Regulatory Body.
- 3.8 IRG-Rail expect the candidate operator to provide a core set of information, to include at least the following:
- Detailed route (location, number of stops, distance)
  - Detailed stopping patterns
  - Starting date of new proposed service
  - Frequency of proposed service (proposed timetable)
- 3.9 Additional supporting information may also be submitted by the candidate operator. Commercially sensitive information should be indicated. This will be treated in confidence by the Regulatory Body.
- 3.10 IRG-Rail recommends that when the Regulatory Body receives a notification, it publishes the information on its website (except for any confidential data as agreed, in particular from the candidate operator) and shares the relevant core information with any competent authority, any relevant railway undertaking and infrastructure manager, including any Regulatory Body on the route of the new proposed service. Regulatory Bodies concerned may exchange preliminary views and check that the information received is consistent and not contradictory. Regulatory Bodies will have regard to the need for excluding confidential information and any matter that would or might, in its opinion, seriously and prejudicially affect the interest of the candidate operator, so far as this is practicable.
- 3.11 The candidate operator may also wish to discuss their intentions and conduct informal, preparatory conversations with interested parties. This shall not affect the requirement for the operator to submit a notification, nor prejudice any decision by the Regulatory Body.
- 3.12 In accordance with domestic legislation, the Regulatory Body may also notify at this stage the timescales for requesting the principal purpose test. Timescales should be made explicit, but may vary case by case and according to national legislation. They will be determined by the Regulatory Body and notified to any party wishing to require the principal purpose of the new proposed service to be assessed.

**Formal request of principal purpose test**

- 3.13 The notification stage is likely to be followed by, or combined with, a formal request for the principal purpose test, subject to domestic legislation. Directive 2007/58/EC (article 1.8) states that a relevant competent authority and/or interested railway undertakings may apply to the Regulatory Body to request a principal purpose test in order to determine whether the principal purpose of the proposed service is international in nature. The Directive is not entirely clear and is open to different interpretation as to the range of parties entitled to request the test.
- 3.14 IRG-Rail considers that interested railway undertakings that request the test to be carried out should include a reasoned submission that justifies their interest, ie: if

- they can demonstrate that they will potentially be affected by the proposed service. The Regulatory Body will determine whether sufficient interest has been demonstrated.
- 3.15 IRG-Rail notes that Regulatory Bodies must wait to receive a formal request as provided under Directive 2007/58/EC to initiate the test. Regulatory Bodies will not carry out the test under their own initiative. Nevertheless, if no request for the principal purpose is submitted, some Regulatory Bodies may invite the relevant parties to contact them to discuss the process.
- 3.16 IRG-Rail has developed a model pro forma (see Annex 1 – Pro Forma 2) to be used by interested parties when submitting a formal request for the test. This pro forma should include adequate justification of the interest of the party requesting the test.
- 3.17 As soon as a formal request for the test has been submitted, the Regulatory Body should contact the candidate operator requesting any further necessary information, if this has not already been provided at the notification stage through pro forma 1. Information to be provided using the model pro forma (see Annex 1 pro forma 3) should include where available:
- Justification of the principal purpose of the proposed cross-border passenger service,
  - Proportion of turnover and volume derived from international and domestic services,
  - Passenger demand ,
  - Ticket pricing/arrangements (where available, average tariff per passenger-kilometer to be charged for domestic and international travel. The average tariffs must be differentiated for class and time, if applicable),
  - Qualitative information (marketing plans, performance data, etc),
  - An overview of the maximum available passenger capacity per direction and per route segment for the domestic and international route, expressed as numbers of passengers and passenger-kilometers.
- 3.18 IRG-Rail believes that this information is necessary for Regulatory Bodies to come to a reasoned decision and would therefore recommend that the candidate operator make it available to them.
- 3.19 Additional information may also be required and will be collected and reviewed by Regulatory Bodies as appropriate. To this effect, Regulatory Bodies may exercise their powers to request information as provided under domestic legislation.

- 3.20 This form and the information therein will serve as the core basis of the Regulatory Body's assessment of the principal purpose. It is therefore important that the application contains all the relevant details and supporting information. IRG-Rail recommends that Regulatory Bodies publish forms on their websites.
- 3.21 Upon receipt of the formal request, IRG-Rail recommends that the Regulatory Body informs other Regulatory Bodies on the route, sharing all relevant information and exchanging preliminary views. Regulatory Bodies will have due regard to the need to exclude confidential information.
- 3.22 IRG-Rail recommends that the Regulatory Body, when receiving a formal request, responds to clarify the timescales for assessing the principal purpose of the proposed new service, in accordance with domestic legislation where appropriate. This process will take into account the need to provide to all market players a sufficient legal certainty to develop their activities.

**Decision making and criteria**

- 3.23 In order to come to a decision when assessing the principal purpose of a proposed international passenger service, the Regulatory Body must take into account several criteria, subject to requirements in national legislation.
- 3.24 IRG-Rail considers that Regulatory Bodies should verify the principal purpose of the service, case by case. Nevertheless, it is important to ensure some consistency in the approach of Regulatory Bodies on the criteria to be taken into account and what constitutes an international passenger service. The list of criteria should not be exhaustive and specific criteria may have to be taken into account when examining specific cases.
- 3.25 Criteria may include, but need not be limited to:
- Proportion of turnover and of volume derived from international passengers;
  - Length of service (distance);
  - Passenger demand;
  - Ticketing arrangements;
  - Location and number of stops;
  - Timing and frequency of proposed service;
  - Quality standards (eg: punctuality, speed etc);
  - Ticket pricing policy;
  - Qualitative information (e.g. marketing plans, rolling stock type)
- 3.26 IRG-Rail considers that it is not necessary for all those criteria to demonstrate that the service is international for the test to be met. As a general rule, IRG-Rail considers that the service is indicated to be international if the train crosses at least one border of a Member State, and if its purpose is to carry passengers between stations located in different Member States.

- 3.27 Criteria may evolve over time to reflect market developments and experience gained by other Regulatory Bodies. To ensure that the principles of equality and non-discrimination are fully met, the decision making process and decision criteria should be clear and transparent, and published on the Regulatory Body's website.
- 3.28 To date criteria adopted by member states to determine the international nature of a passenger service varies greatly as shown annex 3.
- 3.29 IRG-Rail recommends that criteria include the review of traffic forecasts and business plans to enable assessing the ongoing international purpose of the proposed service in the medium term, rather than at its outset or at some specific time.
- 3.30 IRG-Rail also strongly recommends a qualitative and quantitative assessment rather than strictly applying a quantified threshold. In the cases where legislation envisages quantified threshold strictly, Regulatory Bodies should ensure, if possible, that additional qualitative criteria are also considered and taken into account when assessing the principal purpose
- 3.31 A Regulatory Body has jurisdiction over the principal purpose of a proposed service within the borders of its member state. As a result, different Regulatory Bodies may come to different conclusions on the principal purpose of a cross-border service within their member states, according to the different route details and different criteria applied.
- 3.32 The Regulatory Body will reach a decision within two months of receiving all relevant information, subject to national legislation. We understand that this timescale will be shortened to six weeks once the Recast of the First Railway Package comes into force. It will then communicate in writing the result of the principal purpose test to all relevant parties and to all Regulatory Bodies on the route. It will publish and provide the grounds for its decision as appropriate on its website. In arranging for the publication of information or decision, the Regulatory Body will have regard to the need for excluding, so far as that is practicable, any matter that would or might, in its opinion, seriously and prejudicially affect the interests of concerned parties. A summary of decisions made by IRG-Rail members will also be published on the IRG-Rail website in English.

#### **4. Cooperation of Regulatory Bodies**

##### **General**

- 4.1 There may be some instances where several Regulatory Bodies may be responsible for determining the principal purpose of a service in specific cases. This may mean that the railway activity of several Member States might be affected by the decisions taken by one or more Regulatory Bodies. Directive 2007/58/EC does not provide any specific provision in this respect.
- 4.2 The Commission 2010/353/01<sup>4</sup> emphasises the importance of cooperation between Regulatory Bodies: "it is of utmost importance to ensure that the decisions

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<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:353:0001:0006:EN:PDF>

which have a cross-border impact are appropriately coordinated between the Regulatory Bodies concerned. Regulatory Bodies should therefore systematically inform their counterparts in other Member States concerned by the rail service in question and exchange their preliminary views on whether it meets the principal purpose requirement before they take any decision under their competence.”

- 4.3 IRG-Rail agrees that, in the light of the international nature of the rail services in question, Regulatory Bodies must ensure that decisions that may have a cross-border impact are co-ordinated as necessary. IRG-Rail has drawn up some co-operation principles which are detailed below.
- 4.4 IRG-Rail however recognises that coordination may be impaired by constraints under national legislation. Nevertheless IRG-Rail will recommend its members to cooperate in decision-making, acknowledging that there may be different outcomes to the test in different countries.
- 4.5 To ensure quick decisions, IRG-Rail has developed some principles of cooperation. IRG-Rail members will work closely together and will follow the key principles outlined in paragraphs 4.6 to 4.10. They will systematically inform their counterparts in other Member States concerned by the rail service in question and exchange their preliminary views on whether it meets the principal purpose requirement before they take any decision under their competence.

#### **Principles of cooperation**

- 4.6 As soon as an applicant notifies the Regulatory Body of its intention to operate a new international passenger service, that Regulatory Body will forward the core set of information that has been received, in particular the proposed new service and route, to the other Regulatory Bodies involved on that route, as necessary, and on condition of a non-disclosure agreement.
- 4.7 Regulatory Bodies concerned will meet to exchange preliminary views and check that the information received is consistent and not contradictory.
- 4.8 Similarly upon receipt of a formal request, the Regulatory Body will inform the other Regulatory Bodies of such a request, communicate all necessary information and share preliminary views. All relevant parties that need to be made aware of such request will also be contacted. The Regulatory Body will have regard to the need for excluding confidential information and any matter that would or might, in its opinion, seriously and prejudicially affect the interest of the candidate operators, so far as this is practicable.
- 4.9 The relevant Regulatory Bodies will apply the principal purpose test and communicate the results to the other Regulatory Bodies on the route.
- 4.10 A flowchart detailing the cooperation agreement can be found at Annex 2.

**5. Conclusions**

- 5.1 This document shows IRG-Rail's view on current practice and provides a view on how the principal purpose test should be conducted. It also identifies several areas where European legislation is unclear or silent. Therefore and for the time being IRG-Rail has made certain assumptions on the following areas.
- 5.2 European legislation does not address the case where a proposed new international service passes the test and is declared international by one Regulatory Body in one Member State but does not meet the test by another Regulatory Body in another Member State. IRG-Rail considers that Regulatory Bodies may come to different conclusions for the principal purpose test on a proposed international passenger service even when applying the same principles and methodology, reflecting for instance the different route length or stopping patterns in each member state.
- 5.3 European legislation does not specify any time period for the submission of a formal requests for the principal purpose test. In effect, this can leave the door open to interested parties to make a formal request at all times, even when the new service has already begun. This may cause legal uncertainty and deter investment leading to reduced competition.
- 5.4 The Commission emphasises the importance of cooperation between Regulatory Bodies in the interpretative notice on Directive 2007/58. However, this Directive does not include the grounds for Regulatory Bodies to exchange case specific information. IRG-Rail assumes Regulatory Bodies should be able to exchange this kind of information to ensure that decisions are based on consistent data.
- 5.5 Similarly, the European Directive is not clear as to whether it would be possible for Regulatory Bodies to review their decision in the light of changing circumstances after a certain period of time.
- 5.6 IRG-Rail intends to discuss and clarify these issues with the European Commission and may, as a result, modify this paper at a later stage.

## **ANNEX 1**

ANNEX 1 contains:

1. Recommended model notification form
2. Recommended model formal request
3. Recommended model pro forma for additional information from candidate operator

### **1 – MODEL NOTIFICATION FORM**

**Notification to a Regulatory Body of intention to request capacity with a view to operating an international passenger service as per Directive 2007/58/EC (article 2.3)**

#### **1. Introduction**

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This form should be used to notify to any Regulatory Body member of IRG-Rail the intention to request capacity with a view to operate an international passenger service, without prejudice to existing domestic arrangements.

Without prejudice to the requirements of national legislation, a notification form should be addressed to the Regulatory Body of each member state in which the new proposed service is likely to operate. This form sets out standard information requirements for the proposed new service. Interested parties are strongly encouraged to read the IRG-Rail guidance on the methodology and criteria for assessment of new international passenger services which sets out how Regulatory Bodies, members of IRG-Rail, intend to assess the international nature of the proposed new service.

As provided under the Directive, the Regulatory Body will carry out the principal purpose test and assess the international nature of the planned service upon receipt of a formal request from the relevant competent authorities and/or interested railway undertakings.

As the Regulatory Body intends to limit itself, as far as possible and subject to national legislation, to making a decision based only upon the information presented by the parties rather than undertaking an extensive research of its own, it is very important that this application contains as many relevant details and information as possible.

A copy of the relevant notification form and of the guidance note can be accessed electronically via IRG-Rail members own websites. A copy of the model notification form can be downloaded via the IRG-Rail website at [www.irg-rail.eu](http://www.irg-rail.eu).

If necessary or envisaged under domestic legislation, this notification form may be combined with the formal request form.

Please indicate clearly any elements in the notification form that you would wish to exclude from wider circulation on the grounds of confidentiality, and provide a full justification for each instance by reference, if possible, to statutory/legal grounds.

**2. Contact details (company and named individual for queries)**

Company (name, address and legal entity):
Contact individual:
Job title:
Address:
Telephone number:
E-mail address:
Company registration number (if applicable, or or the foreign register and registration number of the railway undertaking concerned.)
Date:
Signature:

**2. Licence and railway safety certificate**

Please state whether the applicant intends to operate the services itself or have them operated on its behalf.

Please state whether the proposed operator of the services :

- (a) Holds a valid train operating European licence under Directive 2001/13/EC and
- (b) Has an accepted safety certificate under Directive 2004/49/EC as amended.

If the answer to (a) or (b) is no, please state the point which that person has reached in their obtaining of the licence or railway safety certificate (as the case may be).

<i>Use this box to provide information</i>
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### **3. The proposed service**

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#### **Details of the international passenger service to be assessed**

Please provide an executive summary of the proposed request. This should contain an explanation as to why the main objective of the proposed service is of international nature.

*Detailed route*

- Departure location of the train service (country and station)
- Destination location of the train service (country and station)
- Location of border checkpoint(s)

*Detailed stopping patterns*

- Location of stops (country and station)
- Number of stops

*Starting date of new proposed service*

- Estimated starting date of new service

*Proposed timetable*

- Frequency of proposed service per day and/or per week
- Frequency of proposed stops, per direction
- Any deviations in frequency or in stops, for example seasonal or holiday schedules, from the standard schedule, per direction.

Please state per route for the first five years of the new operation:

### **4. Supporting information (optional)**

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Please indicate any other relevant information, including a list and explanation of any other material being submitted. Examples of additional information to be included in relation of the proposed new operation are as illustrated below. Information should cover the first five years of operation where possible.

*Use this box to provide information, as relevant*

- Justification of the principal purpose of the proposed cross-border passenger service
- Proportion of turnover and volume derived from international and domestic services
- Passenger demand
- Ticket pricing/arrangements (where available, average tariff per passenger-kilometer to be charged for international and domestic travel. The average tariffs must be differentiated for class and time, if applicable)

- tariffs must be differentiated for class and time, if applicable)
- Qualitative information (marketing plans, performance data, etc)
- An overview of the maximum available passenger capacity per direction and per route segment for the domestic route, expressed as numbers of passengers and passenger-kilometers.

### **Supporting documentation**

Please provide details of any supporting documentation that you are submitting to the Regulatory Body with this request form in relation to information outlined in section 3 above.

*Use this box to list documents*

### **4.2 Confidentiality exclusions**

Please indicate clearly any elements that you would wish to exclude from wider publication on the grounds of confidentiality, and provide a full justification for each instance by reference, if possible, to statutory/legal grounds. Subject to our decision on such exclusions, it is our intention to publish this notification form on the relevant websites.

*Use this box to provide information*

**5. Certification**

I *[insert name of applicant]* certify that the information provided in this form is true and complete to the best of my knowledge

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Signed .....

Date .....

Name (in caps) .....

Job title .....

For *(insert company name)* .....

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**6. Submission**

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**6.1 What to send**

Please supply, in hard copy, the signed top copy of this form, copies of any documents incorporated by reference and any other attachments, supporting documents or information.

Please also supply the form and any other supporting document and information, in electronic form, by email or on disc, in plain Microsoft Word format.

You may also submit a formal request for the principal purpose test to be conducted. If you wish to do so please also complete and attach a formal request form.

**6.2 Where to send it**

*[insert email and postal address of relevant person at Regulatory Body]*

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## 2 – MODEL FORMAL REQUEST FORM

**Formal request for a principal purpose test, to be completed by the relevant competent authority, and/or interested railway undertaking as per Directive 2007/58/EC (article 1.8)**

### 1. Introduction

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This form should be used to formally request any Regulatory Body member of IRG-Rail for the principal purpose test, without prejudice to existing domestic arrangements.

A request form should be addressed to the Regulatory Body of each member state in which the new proposed service is likely to operate. This form sets out standard information requirements for the formal request from the relevant competent authorities and/or interested railway undertakings (including candidate operator). Interested parties are strongly encouraged to read the IRG-Rail guidance on the methodology and criteria for assessment of new international passenger services which sets out how Regulatory Bodies, members of IRG-Rail, intend to assess the international nature of the proposed new service.

As the Regulatory Body intends to limit itself, as far as possible and subject to national legislation, to making a decision based only upon the information presented by the parties rather than undertaking an extensive research of its own, it is very important that this formal request contains as many relevant details and information as possible.

A copy of this form and of the guidance note can be accessed electronically via IRG-Rail members own websites or downloaded via IRG-Rail website at [www.irk-rail.eu](http://www.irk-rail.eu).

If necessary or envisaged under domestic legislation, this formal request can be combined with the notification form.

Please indicate clearly any elements in the form that you would wish to exclude from wider consultation on the grounds of confidentiality, and provide a full justification for each instance.

### 2. Contact details (company and named individual for queries)

Company (name, address and legal entity):

Contact individual:

Job title:

Address:

Telephone number:

E-mail address:

Company registration number (if applicable, or or the foreign register and registration number of the railway undertaking concerned.)

Date:

Signature:

**3. Information on the request**

Please explain your interests in a decision by the Regulatory Body on the principal purpose of the new international passenger service.

Please explain why the principal purpose of the proposed cross-border passenger transport is (not) international in nature, based on the facts in the notification.

Please include information and documentation that support your explanations, insofar such information is reasonably available to you, considering your market position.

*Use this box to provide information*

**Supporting documentation**

Please provide details of any supporting documentation that you are submitting to the Regulatory Body with this request form in relation to information outlined in section 3 above.

*Use this box to list documents*

**4.2 Confidentiality exclusions**

Please indicate clearly any elements in the notification form that you would wish to exclude from wider consultation on the grounds of confidentiality, and provide a full justification for each instance. Subject to our decision on such exclusions, it is our intention to publish this notification form on the relevant websites.

*Use this box to provide information*

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**4. Certification**

I [*insert name of applicant*] certify that the information provided in this form is true and complete to the best of my knowledge

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Signed .....

Date .....

Name (in caps) .....

Job title .....

For (*insert company name*) .....

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**5. Submission**

**5.1 What to send**

Please supply, in hard copy, the signed top copy of this form, copies of any documents incorporated by reference and any other attachments, supporting documents or information.

Please also supply the form and any other supporting document and information, in electronic form, by email or on disc, in plain Microsoft Word format.

**5.2 Where to send it**

*[insert email address and postal of relevant person at Regulatory Body]*

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### 3 – MODEL FORM FOR ADDITIONAL INFORMATION FROM CANDIDATE OPERATOR

#### Recommended model form to be completed by candidate operator, for principal purpose test

##### 1. Introduction

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This form should be used by the candidate operator wishing to run a new international service, to formally provide a Regulatory Body member of IRG-Rail with supplementary data needed for the principal purpose test. This form should be addressed to the Regulatory Body of each member state in which a formal request for the principal purpose test has been submitted.

Candidate operators are strongly encouraged to read the IRG-Rail guidance on the methodology and criteria for assessment of new international passenger services which sets out how Regulatory Bodies, members of IRG-Rail, intend to assess the international nature of the proposed new service.

A copy of this form and of the guidance note can be accessed electronically via IRG-Rail members own websites or downloaded via IRG-Rail website at [www.irg-rail.eu](http://www.irg-rail.eu).

If necessary or envisaged under domestic legislation, this form can be combined with the formal request form.

Please indicate clearly any elements in the form that you would wish to exclude from wider consultation on the grounds of confidentiality, and provide a full justification for each instance.

##### 2. Contact details (company and named individual for queries)

Company (name, address and legal entity):

Contact individual:

Job title:

Address:

Telephone number:

E-mail address:

Company registration number (if applicable, or or the foreign register and registration number of the railway undertaking concerned.)

Date:

Signature:

### 3. Information on the proposed new service

Please explain why the principal purpose of the proposed cross-border passenger transport is international in nature.

Please include information and documentation that support your explanations, insofar such information is reasonably available to you, considering your market position.

*Use this box to provide information*

### 4. Supporting information (recommended)

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Please indicate any other relevant information, including a list and explanation of any other material being submitted. Examples of additional information to be included in relation of the proposed new operation are as illustrated below. Information should cover the first five years of operation.

- Justification of the principal purpose of the proposed cross-border passenger service
- Proportion of turnover and volume derived from international and domestic services
- Passenger demand
- Ticket pricing/arrangements (where available, average tariff per passenger-kilometer to be charged for international and domestic travel. The average tariffs must be differentiated for class and time, if applicable)
- Qualitative information (marketing plans, performance data, etc)
- An overview of the maximum available passenger capacity per direction and per route segment for the domestic route, expressed as numbers of passengers and passenger-kilometers.

*Use this box to provide information*

**Supporting documentation**

Please provide details of any supporting documentation that you are submitting to the Regulatory Body with this form in relation to information outlined in section 3 above.

*Use this box to list documents*

**4.2 Confidentiality exclusions**

Please indicate clearly any elements in the form that you would wish to exclude from wider consultation on the grounds of confidentiality, and provide a full justification for each instance. Subject to our decision on such exclusions, it is our intention to publish this notification form on the relevant websites.

*Use this box to provide information*

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**4. Certification**

I [*insert name of applicant*] certify that the information provided in this form is true and complete to the best of my knowledge

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Signed .....

Date .....

Name (in caps) .....

Job title .....

For (*insert company name*) .....

## **5. Submission**

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### **5.1 What to send**

Please supply, in hard copy, the signed top copy of this form, copies of any documents incorporated by reference and any other attachments, supporting documents or information.

Please also supply the form and any other supporting document and information, in electronic form, by email or on disc, in plain Microsoft Word format.

### **5.2 Where to send it**

*[insert email address and postal of relevant person at Regulatory Body]*

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**ANNEX 3 – Review of criteria used in assessment of principal purpose in IRG-Rail member states**

		<b>AU</b>	<b>DE</b>	<b>ES</b>	<b>FR</b>	<b>GR</b>	<b>HU</b>	<b>LV</b>	<b>NL</b>	<b>UK</b>
Quantitative	Passenger no.	X	<input checked="" type="checkbox"/>	X	X	X	X		<input checked="" type="checkbox"/>	X
	Route distance			X	X	X	X		<input checked="" type="checkbox"/>	X
	Ticket revenue	X		X	X	X		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	X
Qualitative	Through-transit							<input checked="" type="checkbox"/>		
	State of origin							X		
	Marketing strategy	X			X	X			X	X
	Nature of rolling stock	X			X				X	X
	Other factors	X			X	X			X	X

x = criteria used     = threshold applied

Criteria currently used by Regulatory Bodies cover :

**Passenger numbers:** proportion of the total number of passengers that are crossing a border.

**Route distance:** proportion of the route, from origin to destination, that is outside that member state.

**Ticket revenue:** proportion of turnover

**Through-transit:** if both the origin and destination of a service are outside that member state

**State of origin:** if the service originates within, or is owned by an RU from, a certain country (eg: non-EU)

**Marketing strategy:** whether the marketing, timetabling, pricing structure etc. is targeted at domestic or international passengers

**Nature of rolling stock:** the principal purpose of a service can often be seen in the nature of its rolling stock. Dining car, luggage room etc.

**Other factors:** not specified

## Annex 4 – Application of principal purpose test in Europe

The following section summarises the way the principal purpose test is applied in Member States of IRG-Rail members

### Austria:

The principle purpose test in Austria is based on § 57b EisebG (national railway act) and on the directive of the Schienen-Control Kommission “*Allgemeine Kriterien der Schienen-Control Kommission zur Ermittlung der Gefährdung des wirtschaftlichen Gleichgewichts eines Vertrages über die Erbringung gemeinwirtschaftlicher Leistungen im Personenverkehr*“.

The principle purpose test can only be requested in combination with an economic equilibrium test. Only the interested parties of a public service contract, who claim that the economic equilibrium is at risk and the infrastructure manager are entitled to request such a test. A new entrant can only ask for the principle purpose test in combination with a complaint about the infrastructure company in case he was denied access to the railway infrastructure with the argument that the train service is not international. There is no legal obligation in the Austrian law that a new entrant has to notify the Regulatory Body about a planned international service, but he is very welcome to do so. Neither the notification by the new entrant nor a request for the test will be published at the website of Schienen-Control.

The test is based on the following list of the criteria, which are not exhaustive:

- § Proportion of turnover and on passengers of the new service (national vs. international)
- § Marketing plans
- § Location and number of stops
- § Nature of rolling stock

### France

ARAF is currently preparing a public consultation regarding its list of criteria. The first version of this list is non-exhaustive and includes proportion of turnover, volume from domestic and international passenger traffic, length of service and populations of each stations catchment area. Qualitative criteria will also be taken into account.

### Germany

Test based on threshold: Principal purpose is presumed if over 50% of passengers cross the border. The new railway undertaking must request classification of its service as international passenger service at least two months prior to the path request.

### Greece

For the decision-making when addressing the principal purpose of an international passenger service, the Regulatory Body must take into consideration and examine a set of criteria. Such criteria may include but are not limited to

- a) Proportion of turnover derived from transport of international passengers
- b) Proportion of volume derived from transport of international passengers
- c) Length of the service
- d) Pricing policy
- e) Location and number of stops
- f) Timing and frequency of the proposed service

This list of criteria may evolve over time to reflect market developments and experience gained by other Regulatory Bodies. In any case, the Greek Regulatory Body communicates its decisions to all parties by letter and publishes it on its website. In particular, if the principal purpose test of the international service is negative (ie: the international nature of the service is not confirmed) the relevant decision includes access limitation measures.

### **Hungary**

The new entrant must notify the Regulatory Body at least 30 days prior to its path request, if it intends to apply for a path for a new international service that includes cabotage. A new international service can be provided only if the Regulatory Body assesses whether the principal purpose of the new service is international in nature. The test is based on criteria including; proportion of and volume from domestic and international passenger traffic and the proportion of the length of service within the borders of Hungary.

### **Latvia**

Test based on threshold: 67% (2/3<sup>rd</sup>) of passengers must cross the border

### **Netherlands**

Test based on thresholds: distance over 30%' outside of NL; 75% passengers must cross the border; over 75 % revenue must come from passengers crossing the border. The Regulatory Body must also take market developments and service developments into account and must perform a quantitative and qualitative analysis.

### **Spain**

Test based on criteria, including proportion of turnover, volume from domestic and international passenger traffic and length of service.

### **UK**

Non exhaustive list of quantitative and qualitative criteria published in guidance document in June 2009. Main criteria include proportion of turnover and of volume derived from international passenger services, length of service, passenger demand, ticket pricing, ticketing arrangements, location and number of stops, timing and frequency of the proposed service, impact on the profitability of services under a public service contract and impact on net cost to the competent authority letting public service contract. Additional criteria may be considered.