

**Independent Regulators' Group – Rail**

**Annexes to the fifth Annual Market Monitoring Report**

March 2017

**Index**

Annex 1 – Definitions ..... 3

Annex 2 – Main developments in 2015..... 5

Annex 3 – Competition rules ..... 12

Annex 4 – List of regulatory decisions in 2015 ..... 15

Annex 5 – Revenue of railway undertakings ..... 23

## Annex 1 – Definitions

<b>Active railway undertaking</b>	Undertakings providing services for the transport of goods and / or passengers and /or others on rail networks as defined in Directive 2012/34/EU. Exclude from perimeter undertakings having provided no service during the year. <sup>1</sup> The nationality of railway undertakings refers to the country that delivered the railway undertaking license.
<b>Commercial service or non-PSO service</b>	All passenger services that do not fall within the scope of services provided under public service obligations (2015/1100/EC).
<b>Electrified route</b>	Consecutive lines and nodes as a whole between a defined source and target that allows railway vehicles to use electricity as a traction energy.
<b>Fare</b>	Amount paid by a passenger as part of a contract of carriage to the railway undertaking or a ticket vendor for the provision of one or more transport services by rail.
<b>High-speed line</b>	Line specially built to allow traffic to travel at speeds generally equal to or greater than 250 km/h on its main segments; it may include connecting segments where speeds are reduced to take account of local conditions (2015/1100/EC).
<b>Historical incumbent</b>	Railway undertaking that was part of a state-controlled railway monopoly (or, still is), including all related companies with a current ownership in relation to the incumbent railway undertaking. The incumbent is considered as “domestic” if it originates from the country studied, or “foreign” if it originates from a country other than the country studied.
<b>Infrastructure manager</b>	Any body or firm responsible in particular for establishing, managing and maintaining railway infrastructure, including traffic management and control-command and signalling; the functions of the Infrastructure Manager on a network may be allocated to different bodies or firms (Directive 2012/34/EU).
<b>International passenger traffic</b>	Passenger traffic where the train crosses at least one border and where the principal purpose of the traffic is to carry passengers between stations located in different Member States (Directive 2012/34/EC).
<b>International freight traffic</b>	Freight traffic where the train crosses at least one border (Directive 2012/34/EU).
<b>Licence</b>	An authorization issued by a licensing authority to an undertaking, by which its capacity to provide rail transport services as railway undertaking is recognised; that capacity may be limited to the provision of specific types of services (Directive 2012/34/EU).
<b>Minimum access package</b>	A package of rights conferred by Directive 2012/34/EU, Annex II, point 1. These rights are included in the access charge and confer access to railway infrastructure facilities and a set of services for international or domestic traffic; they include the handling of requests for infrastructure capacity, the right to use granted capacity as well as use of electrical supply equipment.
<b>National transport</b>	Passenger or freight service operated exclusively within the borders of one Member State (2015/1100/EC).
<b>Net tonne</b>	Weight of the load (including for example the container weight).
<b>Network statement</b>	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 (Directive 2012/34/EU).

<sup>1</sup> This definition reflects the definition of railway undertakings of Eurostat (Regulation 91/2003) whilst adding the requirement of being active on the network(s).

<b>Open-access</b>	The legal process by which operators who are not franchised can gain access to the railway infrastructure; this enables them to run services competing with the services run by other operators. In other words, open-access services cover commercial services for which on-track rail competition is allowed. Directive 91/440 sets out a framework allowing open access operations on railway lines by companies other than the historic operators ('incumbents'). Directive 2012/34 lays down common rules and principles governing conditions of access to the network.
<b>Other traffic</b>	All other traffic (except passenger and freight traffic) for which infrastructure charges are paid. This can for example be construction works or test drives traffic.
<b>Passenger.km</b>	Unit of measure representing the transport of one passenger by rail over a distance of one kilometre.
<b>PSO compensation</b>	Financial benefits granted, during the reporting period, directly or indirectly by a competent authority from public funds for the operation of rail services under a public service obligation (2015/1100/EC).
<b>PSO service</b>	All passenger services that fall within the scope of services provided under public service obligations.
<b>Revenue</b>	For railway undertakings, it refers to total fees collected from the provision of rail transportation services during the reporting period; it excludes other income such as revenue from catering, stations services and on-board services (2015/1100/EC). For the infrastructure manager, it refers to revenue for all track access charges for the minimum access package, as specified in Article 13(1) of Directive 2012/34/EU excluding electricity.
<b>Route length</b>	Length of all routes available for freight and passenger traffic on the network of the infrastructure manager, as specified by the infrastructure manager in the Network Statement.
<b>Tonne.km</b>	Unit of measure representing the transportation of one tonne over one kilometre.
<b>Track</b>	Pair of rails over which rail-borne vehicles can travel (2015/1100/EC).
<b>Track access charges</b>	Charges collected for the minimum access package referred to in point 1 of Annex II to Directive 2012/34/EU.
<b>Train.km</b>	Unit of measure representing the movement of one train over one kilometre. The distance used is the distance actually run, if available, otherwise the standard network distance between the origin and the destination shall be used.

## Annex 2 – Main developments in 2015

 <b>Austria</b>	 <b>Belgium</b>	 <b>Bulgaria</b>
<p>2015 was marked by the full commissioning of Vienna's central station in December. This allowed the operating concept to be realised with the central station as a transfer hub in long-distance transport between the Westbahn line and the Südbahn line. The impact on ridership will, however, not become apparent until 2016. Additionally, the four-track expansion was pressed further ahead with on the Westbahn line with commissioning of the eastern end of the station in Amstetten.</p> <p>Due to the economic development in Austria and in Europe, rail freight transport in 2015 declined slightly over the previous year, but reached approximately the level of 2013. This mainly concerned two indicators: volume (net tonnes) and gross tonne-kilometres. Net tonne-kilometres, on the other hand, increased slightly. In 2015 there were again some changes to the number of railway undertakings operating in Austria. DB Schenker Rail from Germany, Transalpin Eisenbahn, which is headquartered in Switzerland, Trenitalia from Italy as well as Walser Eisenbahn and Porr Austriarail from Austria have all been added. All five companies cited are approved for rail freight transport. Trenitalia and Walser Eisenbahn are also approved for rail passenger transport. The non-incumbent railways (as defined by the Railway Act, meaning all railways besides the ÖBB Group regardless of their actual ownership conditions) were able to raise their market share in transport volume (in tonnes) from 26.2 to 27.0</p>	<p>The freight market is stable and hasn't changed. There is a "new operator in the international passenger service market": Until 2015 was Eurostar Int. Limited, which is responsible for the connection between Brussels-Lille-London, the only "new entrant". This company, however, is still largely in the hands of incumbents (ref 60% of which SNCF: 55% and SNCB: 5%).</p> <p>From March 31, 2015 "Thi Factory" entered as a railway company into the market for international passenger services. Thi Factory provides the operational section of the rail services of THALYS. The commercial part is Thalys International, a collaboration between SNCB, DB, SNCF and NS. Specifically, the international passenger transport service in Belgium and France previously carried out by SNCB and SNCF in the name of THALYS are now performed by Thi Factory. The shareholding of the company is divided as follows: 40% SNCB and SNCF 60%.</p>	<p>„BDZ – Cargo“ EOOD and „BDZ – Passenger Services“ EOOD are 100% state-owned companies. Both railway undertakings have serious financial difficulties.</p> <p>The incumbent railway undertaking "BDZ - Passengers Services" EOOD is the only operator for passenger transport services on the market. Due to the major repairs carried out on the railway infrastructure, which are financed under Operational Programme "Transport", and also due to a decrease in the number of trains, there has been a steadily reduction in the number of passengers transported.</p> <p>The competition in freight transport services is within the railway transport, and not within the other modes of transport. Due to the low speeds and infrastructure constructions railway transport is not very attractive. The amount of goods transported by private railway undertakings continues to increase, as well as their respective market share, whereas the market share of the incumbent railway undertaking „BDZ – Cargo“ EOOD is decreasing progressively. However, despite the unsuccessful attempts „BDZ – Cargo“ EOOD to be privatized and its serious financial difficulties, it still works and strives for recovery by taking adequate measures.</p> <p>In 2014 it was developed a Recovery programme for both incumbents.</p>

<p>per cent, and their share in transport services (net tonne-kilometres) rose from 21.4 to 23.5 per cent. Five undertakings have market shares between two and five per cent, and the others lie in the range of or below one per cent.</p> <p>In rail passenger transport in the reporting year, 282 million passengers were carried, which signifies further growth in relation to 2014. The market share of the non-incumbent railways increased from 15.4 to 15.7 per cent. The percentage of private railways in passenger kilometres rose from 11.8 to 12.2 per cent.</p>		
 <p style="text-align: center;"><b>Croatia</b></p>	 <p style="text-align: center;"><b>Finland</b></p>	 <p style="text-align: center;"><b>France</b></p>
<p>On Croatian railway market services operate six carriers, five for freight transport (HŽ Cargo Ltd., PPD TRANSPORT Ltd., Rail Cargo Carrier Kft and Rail Transport Service GmbH, Train Hungary Maganvasut Kft), and one for passenger transport (HŽ Putnički prijevoz Ltd). Infrastructure manager (HŽ Infrastruktura d.o.o.) is independent company.</p> <p>Data for 2015 are pretty steady in comparison with previous year.</p>	<p>The competent authority Helsinki Region Transport HRT, the incumbent VR Ltd. and the rolling stock company Pääkaupunkiseudun Junakalustoyhtiö Ltd. signed a letter of intent on commuter train services for 2016-2021. The letter of intent provides the basis for a new five-year contract. The new contract will take effect on 1 April 2016. The new agreement postpones competitive tendering planned by HRT. HRT continues to prepare the tendering of train services and tendered commuter services will start in summer 2021.</p> <p>Ring Rail Line was opened for passenger traffic on 1 July 2015.</p> <p>The rail line links the Vantaankoski line and main line, providing a new crosstown rail link in the city of Vantaa. The line also provides a new transport link from Helsinki city center to Helsinki Airport and the rest of the country. The rail line is one of the most significant public transport projects in the metropolitan area's history.</p>	<p>In 2015, the rail freight market achieved a relative good performance (+5.1% in tons-km) while the French freight transport market (road, rail, waterway, pipeline) declined by 1.6%.</p> <p>This is due to the increase of conventional freight transport (+7.5%, 74% of traffic). On the other hand, intermodal freight declined slightly (-1.1%) despite the very good performance of semi-trailers transport (+28%).</p> <p>However, the modal share of rail accounts for only 10.2% of total freight transport and has not really changed since 2006 (year of liberalisation of the domestic rail freight market).</p> <p>The incumbent (with its subsidiaries) market share is about 70% (in trains.km). There are 20 new entrants (not belonging to the national incumbent).</p> <p>With a quasi-stagnation in 2015(+0.3% in pax.km), the rail passenger market underperformed again the growth of the overall French passenger transport market (+2.1%) which is mainly driven by the increase of individual mobility (+2.4% in 2015). The modal share of individual mobility (79.5%) has thus slightly</p>

		<p>increased since a bottom level reached in 2012 (79.2%) after almost twenty years of gradual decrease. The railway modal share has been hovering around 11.5% (including “RER” Paris suburban train network) since 2008.</p> <p>Growth of the rail market has been driven by high-speed trains (incl. international traffic) and regional traffic in the area of Paris Region (incl. RER), while PSO regional traffic in other Regions stagnated and PSO long-distance traffic declined substantially.</p> <p>International railway passenger market has been liberalised in 2003 but there is almost no effective competition (except Thello), as the foreign incumbents organised partnerships controlled by the national incumbent to operate international and cross-border traffics.</p>
 <p style="text-align: center;"><b>Germany</b></p>	 <p style="text-align: center;"><b>Greece</b></p>	 <p style="text-align: center;"><b>Hungary</b></p>
<p>In 2015 the overall situation in the rail market amended slightly. Whilst the revenue in the long-distance passenger rail sector was stable the revenue of local passenger rail services and freight services increased slightly. For the preceding five years a steady revenue growth could be seen in all three rail services. Considering total train kilometres the traffic volume increased only a little in freight train and long-distance passenger rail services. In the local passenger rail services, however, the volume remained nearly constant.</p> <p>The highest market share (in train kilometres) of competitors could still be found in the rail freight sector. The share also increased more than in previous years. By contrast, the share of competitors in long-distance passenger train services remained still very low. But in 2016 three new entrants intended to start</p>	<p>RAS granted licence to the first private RU for national and international freight transportation in Greece. RAS provided assistance in the formation of the bilateral agreement cooperation between our incumbent RU and Bulgarian private undertakings, according to article 14 of Directive 2012/34. The Managing Board of RAS has taken a decision to hold a formal hearing process of OSE for having published the NS of 2015 quite delayed, in November 2014.</p> <p>The decision of the hearing process committee led to the imposition of an administrative sanction of a fine and recommendation not to repeat the violation of the existing deadline.</p>	<p>Major infrastructure development works and electrifications were carried out in 2015. The freight sector performed a slight decrease compared to the previous year both in terms of the weight of the carried goods and in ton-km. The regulatory body issued two new licences for freight operators.</p> <p>The change in the passenger market was insignificant. One new entrant was granted a licence but it runs a few nostalgic and high-quality luxury trains so it has no real effect on the competition. The PSO operators continued their investments in new rolling stock.</p>

<p>their operations in this field. Concerning the competition in local passenger rail services the development was positive.</p> <p>Track access charges increased in both passenger and freight train services on average by 12-13%. The same trend was noticed on charges for accessing passenger stations.</p> <p>Compared to the previous year the operating profit of the railway undertakings deteriorated in all railway sectors.</p>		
 <b>Italy</b>	 <b>Luxembourg</b>	 <b>Netherlands</b>
<p>The rail domestic market has experienced a moderate growth and there was an improvement in the balance sheet accounts of Trenitalia's main competitor.</p>	<p>No major market developments; slight increase in passenger traffic, new cross-border connection. Main infrastructure manager has conducted a number of infrastructure projects leading to disturbances in the rail traffic (delays, blocked routes), preparation works for a future introduction of an ERTMS / GSM-R network.</p>	<p>Until 1 July 2015 Keyrail was the infrastructure manager for the Betuwe route (freight only route). After this, Keyrail was integrated with ProRail, the main infrastructure manager in the Netherlands. Besides this, in December 2015 the Netherlands Railway Act was amended due to the implementation of Directive 2012/34/EU. Furthermore, in 2015 ACM submitted adjusted policy guidelines with regard to international passenger transport by rail for consultation to the market.</p>
 <b>Norway</b>	 <b>Poland</b>	 <b>Slovakia</b>
<p>The Ministry of Transport presented a government bill for reforming the railway sector in Norway. The bill passed in parliament on June 15th 2015. The proposal is to reorganize the sector and introduce competitive tendering of public service contracts, by splitting the market into 6-8 different contracts.</p> <p>To obtain a more appropriate division of labour in the sector and facilitate competition in the railway transport market, the government has proposed several organizational changes:</p>	<p>In 2015, the number of passengers increased by 4.2% and reached the highest level since 2009. Transport performance rose by 8.5% which shows that long-distance journeys rebounded after modernization works were finished on some crucial routes and 20 new Pendolino EMUs were introduced. The average distance travelled by one passenger in 2015 was 62.2 km, while in 2014 it was 59.7 km. Passenger train kilometres increased by 6%. The national long-distance undertaking PKP Intercity recorded a growth of more than 20% in number of passengers and passenger-</p>	<p>The number of railway companies on the railway transport market in december 2015 was 42. The freight transport market was divided between 38 railway undertakings. In the field of passenger transport, the transport services were operated by 4 operators (incumbent operator and new entrants), the majority of services under conditions presented in the public service contracts.</p>

<p>a. Establish a new Railway Directorate in charge of strategic planning of the sector and competent authority for PSO. Operative from January 2017.</p> <p>b. An infrastructure company that will be the new (main) infrastructure manager. The company will still have the same core competencies as the IM today, but a smaller role in strategic planning. In addition, the company will have responsibility for railway related real estate. Operative from January 2017.</p> <p>c. The incumbent RU (NSB) will still be state-owned, but the activity will be concentrated to passenger and freight transport. Other activities in the company, such as real estate, maintenance and ownership of rolling stock, will be organized as independent companies or as part of the IM. The idea behind this is to facilitate competition through non-discriminatory access to rolling stock, maintenance and service facilities.</p> <p>The Ministry of Transport decided to transfer the responsibility for operation of all main inter-modal freight terminals in Norway from the state-owned vertically integrated incumbent operator RailCombi AS/CargoNet AS to the IM (Jernbaneverket).</p> <p>The objective is to ensure non-discriminatory access to terminals and services in terminals for all railway undertakings/applicants. This change was implemented on 1. January 2015.</p> <p>However, the IM will not provide services in the terminals themselves. The IM is in the process of designing a framework for licensing operators of service facilities in the terminals, and will apply this framework to the relevant terminals subsequently over a two-year period.</p> <p>One of the eight freight RUs that were active in Norway during 2015 lost its safety certificate in October 2015, and therefore exited the market.</p>	<p>kilometres thanks to attractive travel times and better punctuality.</p> <p>The new railway undertaking Koleje Małopolskie extended its operating in September to the modernized line to Cracow airport. Also in September, the first new railway line in decades in Poland was opened between Gdańsk and Gdynia, through the airport.</p> <p>Freight market in 2015 recorded mixed results. The weight of transported cargo decreased by 1.8% while transport performance and freight train-kilometres rose by 1%. The average distance of transport increased on the year to year basis from 218.9 km in 2014 to 225.1 km in 2015. The demand for transport of coal and aggregates was low.</p> <p>Intermodal segment continued its growth: by 3.4% in TEU, 6.5% in the number of units, 8.3% in weight and 9.3% in tonne-kilometres, which shows that containers were transported on longer distances.</p>	
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 <b>Slovenia</b>	 <b>Spain</b>	 <b>Switzerland</b>
<p>In 2015 there were no significant changes on the rail market in Republic of Slovenia. Renewals of demolished equipment for traction current supply, as a consequence of ice storm in February 2014, finished in September 2015. Up to this moment exceptional conditions were declared on the track section to Port of Koper, as the section was operable with diesel locomotives only. Passenger services on this track section were performed in very limited extent, what lead to decrease of passenger transport. In freight transport three RUs provide transport services and one RU has safety certificate for shunting provisions in the Port of Koper. In February new entrant received safety certificate. In passenger transport only one RU provides both PSO and commercial transport services.</p>	<p>As stated in the data available, 2015 finished with an increase in railway activity, both for passenger and freight transports, although the figures exhibited were lower than the ones observed in 2014. Regarding freight transport, 2015 ended with 28 million net Tons transported and more than 11.000 million Tons-km, which represented an increase of 5 and 5,2, respectively. Alternative RU gained market share, reaching the 25% of the market measured in net Tons. On the passenger market side, overall activity remained almost constant, lagged by the evolution of urban transport (more than 87% of the total market) which still showed a decrease in its activity. On the contrary, high speed services maintained important growth rates, reaching more than 19,4 million passenger (+8,1%).</p>	<p><b>Development of passenger traffic:</b></p> <p>The only RU active in long-distance transport was particularly challenged by competition from alternative mobility providers (long-distance buses and cheap flights), which had brought about a reduced demand for international passenger transport. Because of the continuously growing demand for transport within Switzerland, especially in regional transport, SBB Passenger's volume grew in 2015 by 1.8% over the previous year.</p> <p>Transport volume has increased continuously since the 2012 slump, and this increase was maintained in 2015. The transport volume grew by 1.2% compared to 2014. This growth is essentially due to increased demand in long-distance travel within Switzerland and in regional transport. Combined with the higher ticket prices, this increase in demand was essentially responsible for SBB Passenger's positive year-end result of CHF 131 million (2014: CHF 104 million).</p> <p><b>Development of freight transport:</b></p> <p>2015 still did not bring the hoped-for quantum leap in the freight transport sector. The volume of goods transport stagnated in 2015 at the previous year's level of 60.5 million tonnes, which is a minimal increase of 0.2% compared to 2014.</p> <p>The commercial success of the two largest RUs varied in 2015. While BLS Cargo experienced close-to-zero growth with a profit of CHF 0.3 million, SBB Cargo made a loss of CHF 22 million after two years of profit. The whole rail sector suffered under the economic and political framework conditions of the euro/franc exchange rate, and the historically low diesel price. These circumstances, as well as the general economic</p>

		downturn, led to a 3.5% reduction in transport volume compared to 2014. On the other hand, SBB Cargo International was able to increase its transport volume by 9.9% over the previous year.
 <b>Sweden</b>	 <b>United Kingdom</b>	
<p>During 2015 the former incumbent, SJ AB, experienced full-out competition within the fast service segment (meaning trains traveling at a maximum speed of 200 km/h). This trough MTR Express' entrance on the line between Stockholm and Gothenburgh. The traffic started out in march and expanded during the year. For freight traffic we have noticed that the former incumbent Green Cargo AB are dropping market shares in terms of revenues.</p>	<p>Since 2008-09 the overall passenger market (in terms of passenger km) has grown by 22%, whereas the open access market has grown by 68%. Over the same time period overall freight tonne km have grown by approximately 8%. Domestic intermodal freight has shown a much larger growth of 25%. However other markets have fallen, in particular coal, which has fallen by 18% since 2008-09. In 2015, passenger traffic grew by 2.7% in passenger kms compared to the previous year. Freight moved in tonne km dropped by 12.6%. This large fall was primarily due to a reduction in coal transported, but also a reduction in the movement of metals following issues with the steel industry and also international traffic due to disruption around the channel tunnel with the migrant camps and increased security etc. During the Autum, following ORR's publication of its monitoring report on the mainline infrastructure manager, the Secretary of State expressed concerns about Network Rail's ability to deliver the agreed investment programme and announced the launch of several independent reviews into the status of the railways in GB.As a result, some existing projects were rephased or postponed and the Government increased its involvement in enhancement projects. In April 2015 ORR took on the responsibility for monitoring and enforcing the performance and efficiency of Highways England.</p>	

## Annex 3 – Rules for market entry<sup>2</sup>

### Passenger market

Country	Date of liberalisation			Date of first new entrant			
	National		International	In Open access		In Competitive tenders	
	Long-distance	Regional		National	International	Long-distance	Regional
Austria	09/01/1998	09/01/1998	23/04/2010	28/09/1999	No	No	No
Belgium	No	No	01/01/2010	No	01/01/2010	No	No
Bulgaria	01/01/2002	01/01/2002	01/01/2010	No	No	No	No
Croatia	No	No	01/07/2013	No	No	No	No
Denmark	No	No	03/06/2011	No	No	No	15/01/2003
Estonia	31/03/2004	31/03/2004	31/03/2004	No	No	No	No
Finland	No	No	01/01/2010	No	No	No	No
France	No	No	13/12/2009	No	11/12/2011	No	No
Germany	01/01/1994	01/01/1994	01/01/1994	23/11/1997	23/11/1997	No	23/11/1997
Greece	No	No	01/01/2012	No	No	No	No
Hungary	01/01/2006	01/01/2006	21/06/2009	03/08/2007	No	No	No
Italy	24/10/2003	22/10/2005	08/07/1998	06/02/2007	21/12/2009	No	No
Kosovo	01/01/2012	n/a	01/01/2012	No	No	No	No
Latvia	01/04/1998	01/04/1998	01/04/1998	20/09/2001	01/10/2006	No	No
Luxembourg	01/01/2000	01/01/2000	01/01/2000	No	No	No	No
Netherlands	No	23/04/2003	01/01/2010	No	No	No	01/01/1996
Norway	No	No	01/01/2010	No	No	06/12/2012	11/06/2006
Poland	28/03/2003	28/03/2003	31/12/2009	28/12/2004	No	No	12/09/2005
Slovakia	01/01/2010	01/01/2010	01/01/2010	07/04/2011	07/04/2011	No	No
Slovenia	No	No	01/01/2010	No	No	No	No
Spain	No	No	01/01/2010	27/09/2005	28/09/2005	No	No
Sweden	01/01/1993	01/07/1990	01/10/2009	01/10/2010	n/a	01/01/2000	01/01/1990
Switzerland	No	No	No	No	No	No	No
UK	05/11/1993	05/11/1993	05/11/1993	28/06/1998	09/11/1994	04/02/1996	13/10/1996

<sup>2</sup> Date of first new entrant : date of provision of a licence to a first new entrant.

Country	Open access				Competitive tenders							
	De jure		De facto		Long-distance	Regional	Share of 'competitive' PSO services	Contract duration		Role of the RB in the awarding process	Identity of the contracting authority	
	National	International	National	International				Average	Maximum legal duration		Long-distance	Regional
Austria	Yes	Yes	Yes	No	No	No	-	-	-	None	State	State and Regions
Belgium	No	Yes	No	Yes	No	No	-	-	-	None	State	State
Bulgaria	Yes	Yes	No	No	Yes	Yes	-	15	25	None	State	State
Croatia	No	Yes	No	No	No	No	-	-	-	None	State	State
Denmark	Yes	Yes	Yes	Yes	Mix	Mix	6,66%	10	10	None	State	State
Estonia	Yes	Yes	No	No	Mix	No	0%	-	-	None	State	State
Finland	No	Yes	No	No	No	No	-	-	-	None	State	State and Regions
France	No	Yes	No	Yes	No	No	-	-	-	None	State	Regions
Germany	Yes	Yes	Yes	Yes	No	Yes		10 - 15		None	Not applicable	Regions
Greece	No	Yes	No	No	No	No	-	-	-	None	State	State
Hungary	Yes	Yes	Yes	No	No	No	-	-	-	None	State	State
Italy	Yes	Yes	Yes	Yes	No	Mix	5%	-	-	None	State	Regions
Kosovo	Yes	Yes	No	No	No	No	-	-	-	None	n/a	n/a
Latvia	Yes	Yes	Yes	Yes	No	No	-	-	-	None	State	State
Luxembourg	Yes	Yes	No	No	No	No	-	-	-	None	State	State
Netherlands	No	Yes	No	No	No	Mix	88%	10	15	Ex ante approval	State	Regions
Norway	No	Yes	No	No	Mix	Mix	33%	-	-	None	State	State
Poland	Yes	Yes	Yes	No	No	Mix	37,5%	1	15	Non-binding opinion on a draft PSO contract	State	Regions
Slovakia	Yes	Yes	Yes	Yes	No	No	-	-	-	None	State	State
Slovenia	No	Yes	No	No	No	No	-	-	-	None	State	State
Spain	No	Yes	No	No	No	No	-	-	-	None	State	State
Sweden	Yes	Yes	Yes	Yes	Yes	Yes	-	n/a	15	None	State	Regions
Switzerland	No	No	No	No	No	Mix	0%	-	-	None	State	State and Regions
UK	Yes	Yes	Yes	Yes	Yes	Yes	-	7	15	None	State	State

### Freight market<sup>3</sup>

Country	Date of liberalisation		Date of first new entrant	
	National	International	National	International
Austria	09/01/1998	09/01/1998	28/09/1999	26/09/2001
Belgium	01/01/2007	05/02/1997	01/01/2007	03/04/2002
Bulgaria	01/01/2002	01/01/2007	24/10/2005	01/07/2010
Croatia	08/07/2009	08/07/2009	01/03/2014	01/03/2014
Denmark	27/06/1997	27/06/1997	16/10/1997	15/12/2000
Estonia	31/03/2004	31/03/2004	None	None
Finland	01/01/2007	15/03/2003	15/05/2012	None
France	31/03/2006	07/03/2003	01/01/2006	13/06/2005
Germany	01/01/1994	01/01/1994	01/01/1995	01/01/1995
Greece	01/01/2007	01/01/2006	01/12/2015	01/12/2015
Hungary	01/01/2006	01/01/2006	10/11/2006	10/11/2006
Italy	08/07/1998	08/07/1998	23/06/2000	23/06/2000
Kosovo	01/01/2012	01/01/2012	11/12/2015	n/a
Latvia	01/04/1998	01/04/1998	02/01/2002	02/01/2002
Luxembourg	01/01/2000	01/01/2000	None	01/11/2005
Netherlands	01/01/1995	01/01/1995	01/03/1998	01/01/2002
Norway	01/01/2007	01/01/2006	17/09/2008	01/01/2006
Poland	28/03/2003	28/03/2003	29/08/2003	29/08/2003
Slovakia	01/01/2006	01/01/2006	26/10/2006	26/10/2006
Slovenia	07/03/2007	01/01/2006	01/03/2009	01/03/2009
Spain	01/01/2003	01/01/2005	29/01/2007	11/03/2009
Sweden	01/07/1996	01/07/2004	01/01/1992	Yes
Switzerland	01/01/1999	01/01/1999	01/01/1999	01/01/1999
UK	05/11/1993	05/11/1993	01/01/1995	01/01/1995

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<sup>3</sup> Date of first new entrant: date of provision of a licence to a first new entrant.

## Annex 4 – List of regulatory decisions in 2015

	Austria
	<ul style="list-style-type: none"><li>✓ Compensation for promotional campaign in passenger railway stations Schienen-Control Kommission conducted a procedure to examine the recompense for promotional campaign and services in passenger railway stations, which a railway infrastructure undertaking had provided for in its Network Statement (SNNB). The focus was on a handling fee of 262 euro, which had to be paid for each contract signed on the use of railway premises for promotional campaign activities or services. Schienen-Control Kommission declared the handling fee to be ineffective because in the procedure the railway infrastructure undertaking could not demonstrate conclusively how it had determined the amount.</li><li>✓ Removal of PZB equipment At the suggestion of a railway undertaking, Schienen-Control Kommission initiated a procedure to examine the proposed dismantling of the PZB equipment in connection with the ETCS Level 2 operation on the new stretch of track Vienna-St. Pölten. The procedure is being continued in 2016.</li><li>✓ Complaint over the signing of a framework contract A railway undertaking lodged a complaint to Schienen-Control Kommission over the rejection of its wish to sign a framework contract. The allocation body argued that the new and faster train paths desired by the railway undertaking were not possible without serious interventions in the integrated timetable structure and also that railway undertakings had no entitlement to sign a framework contract. At a hearing with Schienen-Control Kommission, agreement was reached that the complainant's requests for framework contracts could be realised. The allocation body approved the signing of framework contracts desired by the railway undertaking.</li><li>✓ Training as a train driver In 2015 Schienen-Control Kommission dealt for the first time with the complaint of a complainant who was appealing against the termination of her training contract as a train driver by a railway undertaking due to her (repeatedly) having failed to pass an examination. An examination by the SCK revealed that in the present case, access to the training facility was not denied at any time: the termination of an employment relationship does not per se constitute a denial of the standardised right under railway law to access to the training facility.</li><li>✓ Non-disclosure of timetable planning At the suggestion of a railway undertaking, Schienen-Control Kommission initiated a procedure to examine the security precautions taken by a railway infrastructure operating organisation to ensure the confidentiality of information concerning the timetable planning of railway undertakings. Schienen-Control Kommission's investigations revealed that the railway infrastructure undertaking's measures to prevent any transfer of information, which had been determined internally within the company, were sufficient to prevent the disclosure of the sensitive data of railway undertakings. As a result, the procedure was stayed.</li></ul>
	Belgium
	<ul style="list-style-type: none"><li>✓ Decision D-2016-02-SC A railway undertaking complained about the number of minutes accorded to her within the bonus-malus system (performanceregime). Each delay is registered and accounted to the one responsible for the delay. When an RU disagrees with the accorded number of minutes accorded, a neutral body, called 'the arbiter' looks into it and attributes the contested minutes. If there is still a disagreement between the parties after the intervention of the arbiter, the case is brought to the Regulator who decides on the attribution of the minutes. It was the first time that a case was brought to the Regulator. The case was about an incident in the North-South connection of Brussels which caused more than 3000 minutes of delay in total. NMBS, who was responsible for the accident did not contest the fact that caused it, but they contested the amount of minutes that were accounted to this incident.</li><li>✓ Decision D-2016-04-S concerning the ex-officio investigation on capacity allocation We decided that the procedures used by Infrabel to allocate capacity are in line with legislation.</li><li>✓ Ex-officio investigation General terms and conditions on access to passenger stations of NMBS. We will look into the general terms and</li></ul>

conditions for access to passenger stations published on the website of NMBS to see if they are in line with legislation. This on the basis of our competences on control of the network statement as these 'terms and conditions' are part of the network statement. In the network statement of Infrabel a link is provided to the website of NMBS.

- ✓ Decision D-2015-11 in the ex-officio investigation concerning the proposed new tariff for Shunting – appeal ongoing.



### Bulgaria

A scheduled inspection has been performed by Railway Administration Executive Agency (RAEA) on the activities of the infrastructure manager (SE NRIC), described in the Network Statement. As a result, a prescription has been issued for eliminating the established irregularities. An inspection for the implementation of the prescription has been performed.

Some complaints and signals have been handled, submitted by the three RUs against the IM. The complaints were dealt with and after the inspections made, RAEA has issued prescriptions.

A scheduled inspection of the incumbent BDZ - Passenger Services EOOD on the rights and obligations of passengers has been carried out by RAEA regarding problems in issuing of tickets, lack of information and quality services, poor hygiene conditions and overcrowded trains. After the inspection, a prescription has been issued for eliminating the problems. It administers in non-performing stations and stops to be placed at a visible point and in an appropriate manner information about the possibilities of purchasing tickets via telephone or internet or on board the train, and of the procedure for such purchase, as well as information for the nearest station with available ticket office, in accordance with art. 9 paragraph 5 of Regulation 1371/2007.

A cooperation from RAEA to the RU "Bulgarian railway company" AD has been provided, in connection with their complaint to the Greek regulatory body RAS, concerning the refusal of the Greek national incumbent "TRAINOSE" to sign a cross-border agreement on transmission and reception of freight trains at border stations.

A complaint filed by SE NRIC has been dealt with. It was related to the external prophylactic disinfection performed by IM for trains and vehicles entering into the country from Republic of Turkey due to a complex episodic situation and a refusal by "BDZ - Cargo" EOOD to pay charges for disinfection. As a result, it has been organized and held a meeting as a "round table" with participation of representatives of Bulgarian Food Safety Authority, IM and "BDZ - Cargo" EOOD with the commitment of RAEA as a mediator, for the settlement of the disputes arisen.

A complaint filed by SE NRIC related to the preparation of instruction on the relationship between IM and RU "BDZ - Passenger Services" EOOD for shunting performance in the intermediate stations has been dealt with, for which SE NRIC obliges the RU to pay a price, specified in the IM price list. The RU refused to pay, though.

Participation in a Working Group for developing draft proposals for amendment the legislation regarding the optimization of the shunting activity, technical train inspections, capacity allocation and to monitor the allocation process.

Preparation of analyzes and opinions on various issues, according to the functions of the RB.



### Croatia

All service facility operators (9 port and 5 freight terminals) preparing and publication of Service facility operators' Network statement, they are filled form which HAKOM defined and published on their web site. This document published on Croatian and English language.

HAKOM attended meeting which was organized by Infrastructure manager regarding Draft Network statement 2016. There were also present all railway undertakings on market. During the meeting comments were discussed and some of them were accepted. Since this kind of meeting was organized for the first time railway undertakings were satisfied with the possibility to express their opinion and heard explanation from infrastructure manager.

HŽ Cargo appealed against HŽ Infra (further: IM) on Track Access Contract for timetable 2014/2015 (hereinafter: TAC) and The Facilities Use Agreement, the services in service facilities and additional services for timetable 2014/2015 (hereinafter: Services agreement). The appellant argued some provisions regarding standing trains caused by infrastructure works and the amount of compensation for standing, compensation in case of delay or disruption of traffic, reservation fee for non-usage of allocated train path (reservation fee for the allocated train paths whose utilization degree is lower than the marginal utilization degree), billing for

minimum access package and billing complaints, financial guarantees, assembling and disassembling of train and changing of train composition, refueling facilities, charges for the use of wagon scales. The appeal was handled by HAKOM. After collecting all data and doing necessary analysis HAKOM brought decision.

The appeal was partially adopted. IM was ordered to delete the provision in NS 2015 stating that there were no reservation charges, because there were.

According to TAC the IM had to define time and conditions for calculation of the fees in case of train standing which was caused by the works that had not been announced 6 months before their beginning. It was ordered to change the provision dealing with damages in case of traffic disruption caused by a malfunction in equipment or line which disturbs the regular flow of traffic. IM should have changed it in a way to foresee the RU's right to compensation but also the right of IM for the damage compensation from RU in case he caused the delay.

In the Service agreement IM should have changed provision related to the right to reclamation by prescribing the possibility of additional reclamation calculation for the RU. It was also ordered to delete the provision in which IM demanded notary certification statement saying that the authorized signatory of the RU did not change. It was a redundant provision since the payment guarantee is submitted by the legal entity. Other requests were rejected. Due to this decision IM made annexes to the TAC and Service Agreement.

HŽ Cargo appealed regarding the discrimination in cross-border traffic at the border crossing Koprivnica – Gyekenyes in case of limited infrastructure capacity. HŽ Cargo claims that he was discriminated in a way that train of another RU was sent through border before his and he was forced to use another border crossing with Hungary (Kotoriba-Murakersztur).

He claimed that he was discriminated by the Croatian infrastructure manager, due to fact that infrastructure manager leakage Rail Cargo Carrier train before the HŽ Cargo's d.o.o. Migrant crisis caused waiting of freight trains for leakage across the border. Due to waiting, a large number of freight trains were at the border. When the Hungarian infrastructure manager gave the permission for running freight trains Croatian infrastructure manager dispatch freight trains in order how they were ready for shipping. Rail Cargo Carrier trains were ready and they crossed the border. HAKOM rejected HŽ Cargo's d.o.o. appeal and decided that Croatian infrastructure manager didn't act discriminatory.

Another case was the one regarding Train Hungary Magánvasút appeal to the use of private siding owned by HŽ Cargo. He allowed the usage but set very high price based on a monthly usage. These conditions are not acceptable for the potential user (Train Hungary Magánvasút and Rail Cargo Carrier) of this siding. Train Hungary Magánvasút claimed that the charge for the access to use industrial sidings is too high, and he claimed that he was discriminated.

HAKOM rejected this appeal as unfounded, because Train Hungary Magánvasút did not prove discrimination. Since this is an industrial siding HAKOM was not authorized to review charges for use of industrial siding.



## Denmark

JN36-00024: Complaint concerning RU's compliance with the regulation on rail passenger rights concerning compensations etc. in case of delays and cancellations (articles 16 and 17) and concerning information to the passengers about their rights (article 29). The investigation discovered several inconsistencies.

JN34-00030: Complaint about infrastructure charges concerning the years 2015 and 2016. The part of the complaint concerning 2015 charges was dismissed due to exceeding of the time limit for submitting the complaint. The other part of the complaint concerning 2016 charges is still under investigation.

JN34-00021: The case concerned 2014 tariffs for lifts of trailers and containers at the combined terminals in Taulov and Hoeje Taastrup. The complainant (Carlsberg Denmark) claimed that the tariffs were discriminatory and without sufficient documentation of the cost allocation structure and of the accounting and functional separation of the activities of DB Cargo being both dominant freight railway company and terminal operator for the combined terminals. In order to conduct a full investigation of the case detailed information about costs and the basis for the allocation of costs was requested. After several enforcement notices, the terminal operator reluctantly sent forward the requested information. A draft decision was prepared, but before it was issued, the complainant withdrew the complaint (due to a settlement between the complainant and the terminal operator). The Board subsequently issued an advisory statement of 27th September 2016 regarding the requirements of documentation concerning charges etc. to be fulfilled by the terminal operator in the future.

JN34-00021: On-going case about 2014 tariffs for lifts of trailers and containers at the combined terminals in

Taulov and Høje Taastrup. The complainant of this case (Carlsberg Danmark) claims, that the tariffs are discriminatory and without sufficient documentation of the cost allocation structure and of the accounting and functional separation of the activities of DB Schenker Rail Scandinavia being both dominant freight railway company and terminal operator for the combined terminals. In order to conduct a full investigation of the case detailed information about costs and the basis for the allocation of costs have been requested from the terminal operator - and the board has sent several several enforcement notices in order to get these informations from the terminal operator. Most of the documentation was received from the terminal operator and the case was now expected to be dealt with finally within a short period of time.

JN36-00030: Investigations concerning DSB's (the state owned RU) compliance with requirements about separation of accounts, etc. The investigation has shown compliance concerning the year 2015. Furthermore the board has adopted principles about how to handle these investigations in the future.

JN36-00017: The Danish RB has conducted an ex officio investigation of the 2017 Network Statement. The investigation regarded its general compliance with directive 2012/34 and showed that the Network Statement generally complies with the recast directive.

At the same time the RB found that the Network Statement generally follows the guidelines in the RNE Network Statement Common Structure. However, the RB found that some of the annexes in the Network Statement did not contain sufficient information. The RB issued an advisory statement of 24th November 2016.

Complaint concerning RU's compliance with the regulation on rail passenger rights concerning compensations etc. in case of delays and cancellations (articles 16 and 17) and concerning information to the passengers about their rights (article 29). The investigation discovered several inconsistencies.



#### Estonia

The year of 2015 was associated with the adoption of the new Railway act. New Railway act was taken over to state regulation and it came into force on first of April 2016.



#### France

##### ✓ Allocation of capacities:

In December 2015, the Paris Court of Appeal confirmed an ARAFER's dispute settlement concerning an appeal on train paths allocation issues from four railway undertakings (Europorte, ECR, T3M, VFLI) against the infrastructure manager (SNCF Réseau).

In this case, ARAFER decided to implement financial penalties for late cancellations and modifications of allocated train paths by the infrastructure manager on the one hand, and for train paths overbooking by the railway undertakings on the other hand. Thus, both the infrastructure manager and the railway undertakings are committed with mutual incentives to optimise allocation and management of network capacities as of the 2015 timetable. On the basis of this incentive mechanism, the later the train paths modifications and cancellations are, the higher the penalties are.

The Court confirmed the application of ARAFER's decision to the whole sector, not only for the claimers.

##### ✓ Charges for the minimum access package:

In February and May 2015, ARAFER issued two binding opinions on infrastructure charging for 2016. In these opinions, ARAFER asked the infrastructure manager (SNCF Réseau) to deeply redesign by 2017 its charging system notably by a review of its cost model and by an implementation of mark-ups based on efficient, transparent and non-discriminatory principles.

##### ✓ Accounting separation :

Under the French law, accounting rules that are used by the railway undertakings to establish their separated accounts have to be approved by ARAFER.

In 2014, SNCF Mobilités (former SNCF, the incumbent) submitted ARAFER its rules regarding its freight activity (Fret SNCF). In 2015, in its 22nd April decision, ARAFER rejected this document and asked SNCF Mobilités to produce before the end of 2015 new rules integrating all the accounting separations required by the law (freight, passenger activities – including activities partially financed by public funds and service facility management). ARAFER position was mainly due to the lack of separation of the service facilities in the accounts of Fret SNCF. Besides, the split of the cost of debt between the activities was not properly reflecting the financial expenses of an independent company. On top of that, with its deteriorated financial situation, the

autonomy of Fret SNCF was questionable.

✓ Railway station charging:

In February and July 2015, ARAFER issued four dispute settlements regarding railway stations charging. ARAFER received appeals from two public transport authorities against SNCF Gares & Connexions (the railway station manager and owner of buildings) and SNCF Réseau (the infrastructure manager and owner of platforms). The issues in the appeals were mainly about accounting transparency and Weighted Average Cost of Capital (WACC) levels. ARAFER determined that the methodology for WACC calculation was not adapted to the activity, considering (1) the moderate sensitivity of this activity to economic variations, (2) the public ownership of the two managers (belonging to the SNCF group) and (3) the annual review of the charging system for railway stations. ARAFER's decisions set the 2016 pre-tax WACC to [4.5%-5.4%] for SNCF Réseau instead of 6.2%, and to [5.5%-6.9%] for Gares & Connexions instead of 9.2%.

These decisions have been recently confirmed by the French Council of State.



## Germany

The Bundesnetzagentur objected to the intended amendments of the network statement 2017 of DB Netz AG with regard to the deletion of provisions on trial operation. DB Netz AG planned to publish these provisions in future only on its website. The Bundesnetzagentur considers that the data belongs to the compulsory content of the network statement which is essential to ensure an equal treatment of railway undertakings. Trial runs are necessary for testing new rolling stock that has not been approved under realistic conditions. They are important to stimulate competition and thus to facilitate the market entry for new undertakings. For the same reason the Bundesnetzagentur objected equally to the network statement for services facilities of DB Netz AG in a parallel proceeding.

The Bundesnetzagentur was involved in the allocation of scarce infrastructure capacity on the single-track line from/to Sylt. The proceeding was primarily about the allocation of capacity in consideration of framework agreements, allocated train path for the working timetable and train paths for non-scheduled rail services. Problems occurred because of the planned entry of second railway undertaking providing auto train services to Sylt. In its decision the Bundesnetzagentur determined the maximum number of framework agreements which can be concluded on this line during a precise time frame.

In 2013 the Bundesnetzagentur had requested Duisburg Intermodal Terminal GmbH (DIT), a provider of a trimodal freight terminal, to develop network statements for its service facilities used for the transshipment of containers. The administrative court dismissed the claim of DIT and stated that rail related services were provided in the terminal. DIT filed an appeal. Further proceedings will be taken up again in 2016.

According to the Federal Administrative Court DB Fernverkehr AG has to grant non-discriminatory access to the loading ramps of the so-called "Sylt-Shuttle". One question that remained still unanswered was, however, whether this is also the case for the asphalted areas in front of the ramps. In order to find a timely acceptable solution the Bundesnetzagentur and DB Fernverkehr AG concluded a contract regulated by public law for one year which allowed an unobstructed arrival and departure of vehicles.

The Federal Administrative Court approved a decision of the Bundesnetzagentur on the access right of loaders in rail terminals. Deutsche Umschlaggesellschaft Schiene-Straße mbH (DUSS) intended to exclude loaders, which contracted railway undertakings to carry goods, from their own right to conclude agreements for the handling of goods in rail terminals. DUSS was of the opinion that only railway undertakings were allowed to conclude appropriate agreements. Following the decision of Federal Administrative Court also loaders are authorised to conclude these contracts. In a parallel proceeding the Federal Administrative Court stated that loaders themselves are also entitled to conclude agreements for the use of train paths. Since forwarders and operators are responsible for the punctual and reliable delivery of goods, loaders should also be a contractual partner of terminal operators.

A component of the charging scheme of Hamburg Port Authority AöR (HPA) was rescinded by the Bundesnetzagentur. Several undertaking had claimed about this component before. Pursuant to this scheme the movement of rolling stock between different loading facilities within the port could be under certain conditions invoiced repeatedly. The provider of the port lodged an appeal. Further investigations in this case were conducted by the Bundesnetzagentur. The proceeding is still pending.



### Hungary

The regulatory body had a procedure on track access agreements: according to national legislation, upon the request of the IMs, the regulatory body may approve the contracting parties' deviating from the Network Statement in the agreement. The regulatory body executed a procedure in which it investigated if the main IM fulfills the independence requirements prescribed by the relevant law. The RB found out that the requirements were met. The regulatory body also participated in the consultation concerning the amendments of the railway act transposing the Recast directive.



### Italy

By Decision No. 61/2015 of 31 July 2015 ART submitted to public consultation measures aiming at defining the criteria for determining access charges (fees) for the use of the rail infrastructure so as to relate the charges with the costs and investments net of Government funding, based on principles of transparency, accountability and accounting separation.

Measures concern not only the criteria for determining access charges for the use of rail infrastructure, both on the conventional network and on high speed/high capacity networks (so-called "Minimum Access Package" services), but also the criteria for setting the charges for RUs' access to other facilities and services, such as those at passenger stations and terminals for freight transport. The consultation period was closed on 25 September 2015. Following the transposition of Directive 2012/34/EU into the Italian legislative framework by Legislative Decree No 112/2015 of 15 July 2015, on 13th November 2015 the Transport Regulation Authority (ART) issued Decision No 96/2015 setting the criteria to be applied by the IM for the determination of the access charges for the use of the national rail infrastructure. The regulatory measures concerned, inter alia, the level of use and lease payments of station premises, freight terminals and technical facilities.



### Kosovo

Based on the Law 04/L-063 for Kosovo Railways, Article 61.3 which has to do with the determination of tariffs for railway services, and based on Administrative Instruction No. 02 /2013 for the calculation of direct charges for maintenance of railway infrastructure, and according to Administrative Instruction No. 03 /2013 for setting and collecting the fees Defining Access to Railway Infrastructure, RRA has analysed the draft of the Network Statement 2017, respectively chapter 6 which has to do with the charging system, the overall level of payments for the use of services provides from the Infrastructure Manager, Based on formal competence to the draft of the Network Statement 2017, RRA recommends : charging system shall be in compliance with developments in rail sector in Kosovo.



### Netherlands

In 2015 ACM concluded that the Nederlandse Spoorwegen (or NS, the incumbent RU) infringed the Netherlands Railway Act, by failing to provide a reasonable offer of services to Veolia (a regional RU), in the process of a tender for public transport on a regional railway line. Veolia needs to have access to these services in order to make a competitive tender. In relation hereto, ACM started an investigation into other possible infringements of the Netherlands Railway Act and possible abuse of a dominant position. This investigation is still ongoing. Besides this, the Federatie Mobiliteitsbedrijven Nederland (or FMN, an alliance of public transport operators) filed a complaint regarding the height of the track access charges. In its first decision ACM assessed whether the rise in tariffs was in accordance with the law. In some parts the tariffs charged were not and ProRail (the IM) had to adjust these tariffs. In its second decision ACM concluded that regarding certain costs the motivation of those costs was lacking. Besides this, in July 2015, Arriva and Connexion (both regional RU's) filed a complaint against ProRail regarding planned maintenance of the railway tracks. Parties could not agree on the way passenger transport had to be handled during this maintenance period and asked ACM for a decision as to whether these RU's were unfairly treated or discriminated by ProRail.



### Norway

No key regulatory decisions in 2015, however the Norwegian Regulatory Body received two complaints at the end of the year:

The railway undertaking LKAB, transporting iron ore from Kiruna in Sweden to Narvik in Norway, filed a complaint against the IMs levying of infrastructure charges. The charging system implies that freight trains with permitted axle load above 25 tonnes are levied a charge, whereas freight trains with permitted axle load below 25 tonnes don't pay any charge. LKAB complained that the company has to pay charges for all their transport,

regardless of whether the actual axle load is above 25 tonnes, since the permitted axle load is above 25 tonnes. NSB AS, the Norwegian railway incumbent, submitted a complaint against Jernbaneverket, the main Norwegian infrastructure manager. Jernbaneverket is responsible for managing the national railway network, and is also the owner of a number of passenger stations along the network. In the complaint, NSB AS is alleging that Jernbaneverket has failed in providing non-discriminatory access to Gardermoen Station, a rail passenger station located at and serving the main Norwegian airport, by affording Flytoget AS (the Airport Express Train) excessive influence on the ongoing station development and rebuilding at the expense of NSB AS' interests.



### Poland

President of the UTK issued decisions on approval of the unit rates of charges on the timetable 2014/2015 and on the timetable 2015/2016.

On 22 September 2015 the President of UTK issued decision at the request of the infrastructure manager PKP PLK, on which he approved termination of the contract for access to railway infrastructure for freight transport service in the 2014/2015 train timetable. The contract was concluded between IM and one of the small undertakings.

President of UTK issued decisions replacing the agreements concerning the access to the infrastructure. According to the Polish law the President of the UTK initiates the administrative proceedings if there is a threat that railway undertaking and the infrastructure manager will not conclude the necessary agreement before the timetable enters into force.



### Spain

A new Railway Act, transposing RECAST Directive, was published last 30th of September in the Official Journal. In consistency with the Directive, a new access charges structure was adopted as well as the new regime for the service facilities regulation. In addition, competences of national regulatory body (CNMC) were enhanced although, as pointed out in the report elaborated to the Ministry, they didn't comply with the Directive requests. The Government also gave further steps on the liberalization of passenger national transport although the process has not yet begun. ON the CNMC side, during 2015 it was analysed the Network Statement of 2016 as well as the access charges of the Infrastructure Manager, although according to the former framework.



### Sweden

In september, the Swedish Transport Agency decided to revoke the permission for TX Logistik to perform railway undertakings. This based on lacking routines in their safety procedures.



### Switzerland

In 2015, the Railways Arbitration Commission (RACO) carried out the following investigations:

- In the energy price case, the flat-rate tariff for energy for long-distance freight trains in the list of services was examined. RACO was able to achieve partial agreement between infrastructure managers (IMs) and RUs. The IMs will introduce billing for the actual amount of power used for all RUs travelling on their network, by the end of 2015 at the latest. Furthermore, the flat-rate approach to energy prices will be adjusted, at least for train type 6 "Long-distance freight train" in the 2018 list of services (see page 13).
- In the train path allocation case concerning PostMail trains, RACO determined that Trasse Schweiz AG had not performed the train path allocation process for mail transport in conformity with the law. In order to ensure non-discriminatory train path allocation in future, RACO therefore issued instructions to Trasse Schweiz (see page 14). The case before the Federal Administrative Court is pending.
- An investigation was initiated into the distribution of costs between IMs and RUs when lines are closed. As part of the investigation, the Federal Office of Transport has already told RACO it is willing to revise its Guideline on line closures.



### United Kingdom

In January 2015 ORR received an appeal from DB Schenker Rail (UK) Limited following the rejection by Freightliner Limited of its application to access Freightliner's Maritime terminal at the port of Southampton for up to four regular pairs of train services per day with the associated services. Freightliner refused DBS's request for access on the basis that there was insufficient capacity at Maritime Terminal. The issue in the appeal was

therefore whether sufficient capacity existed or could exist at Maritime Terminal to accommodate the request. On 30 October ORR dismissed the appeal and determined that Freightliner Limited's refusal to grant DB Schenker Rail (UK) Limited access and services at Maritime Terminal on the terms sought was justified.

In March 2015, ORR launched a formal investigation to understand the reasons for Network Rail's enhancements going wrong and its failure to deliver its performance targets. The investigation found that Network Rail did not do everything reasonably practicable to deliver the reliability and punctuality needed to support the train services and also failed to adequately plan and deliver its enhancements programme. In response to ORR's investigation findings, Network agreed to develop an enhancement improvement plan to deliver the extensive enhancements portfolio by 2019 and to adopt better planning and quality assurance processes before new timetables were implemented. ORR determined that a financial penalty against Network Rail was not appropriate.

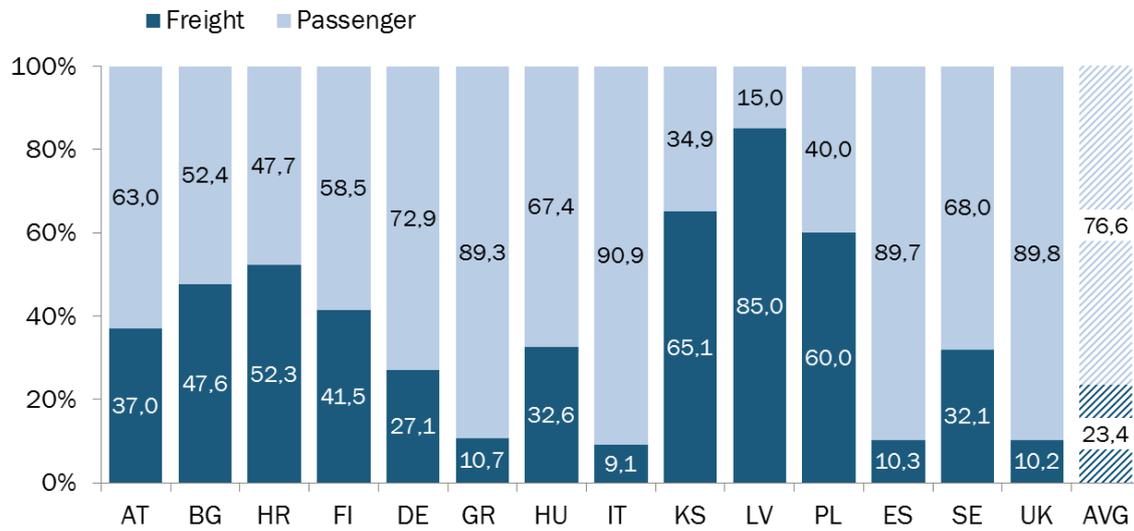
In May 2015, ORR received an appeal from GB Railfreight (GBRf) in respect of Network Rail's decision not to transfer an access right [a train slot] which GBRf claimed was attached to a contract with Aggregate Industries for the transport of aggregates from a quarry at Croft to the Bow depot in East London (Olympic Park). On 16 July 2015, ORR published its decision and found that the industry's Adjudication Panel original decision was correct.

In October 2015, ORR published its assessment of Network Rail's efficiency and financial performance for 2014-2015, the first year of control period 5 (CP5) which runs from April 2014 to March 2019. In October 2015, ORR issued new guidance on complaints handling procedures (CHPs) for the rail industry. The guidance is aimed at ensuring that train and station operators use the insight from passenger complaints to tackle root causes of dissatisfaction and continuously improve the passenger experience.

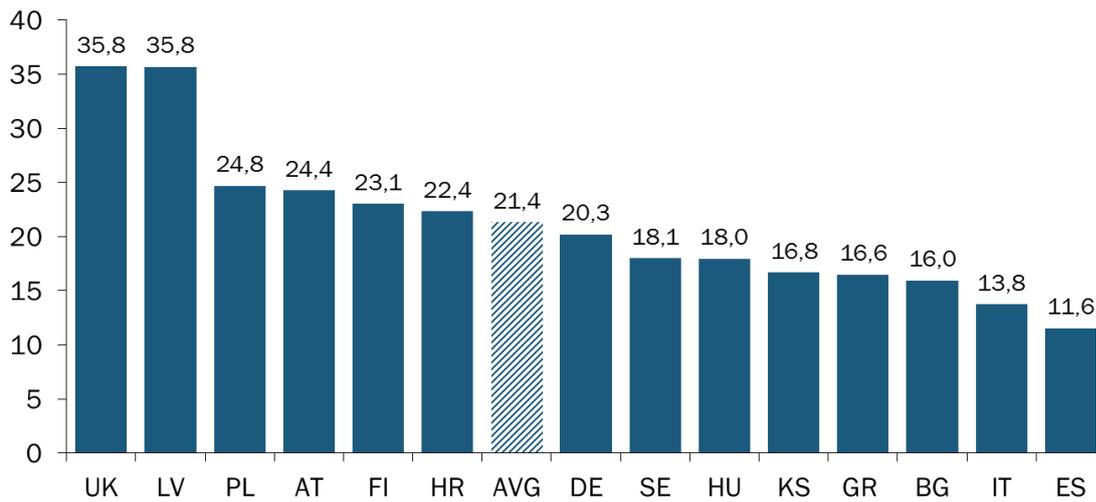
## Annex 5 – Revenue of railway undertakings

Revenue of railway undertakings in 2015 (% of million euro)

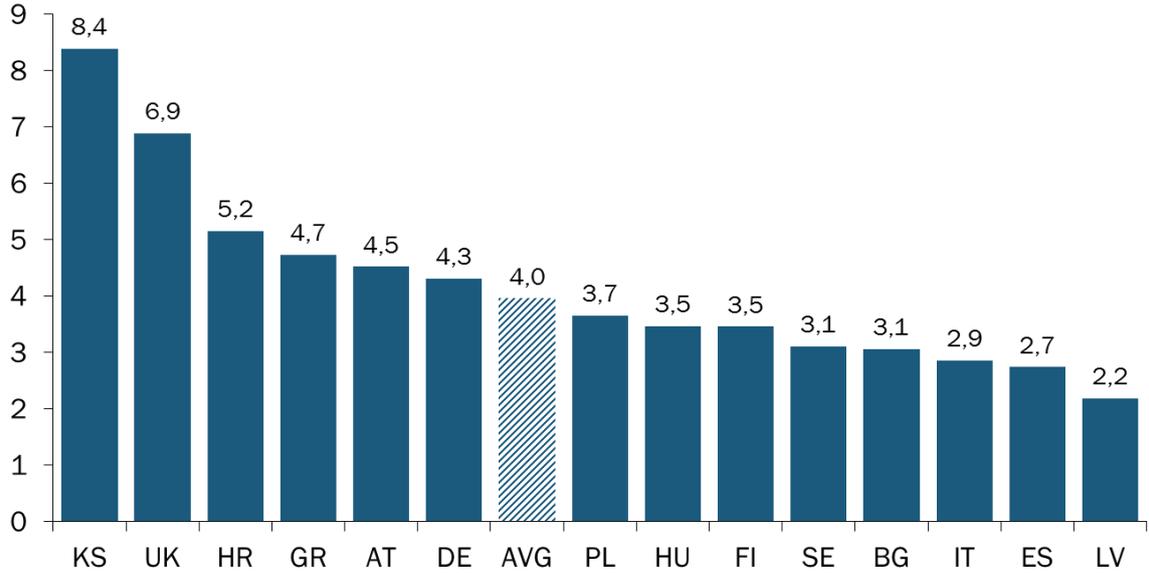
Average weighted (with total operator's revenues)



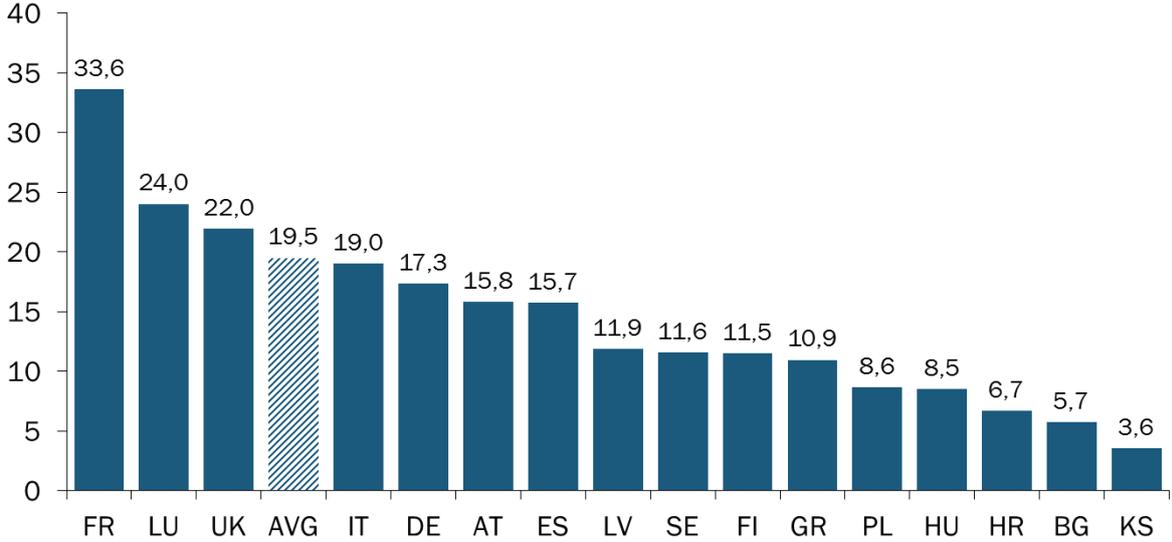
Revenue of freight railway undertakings in 2015 (euro per train km)



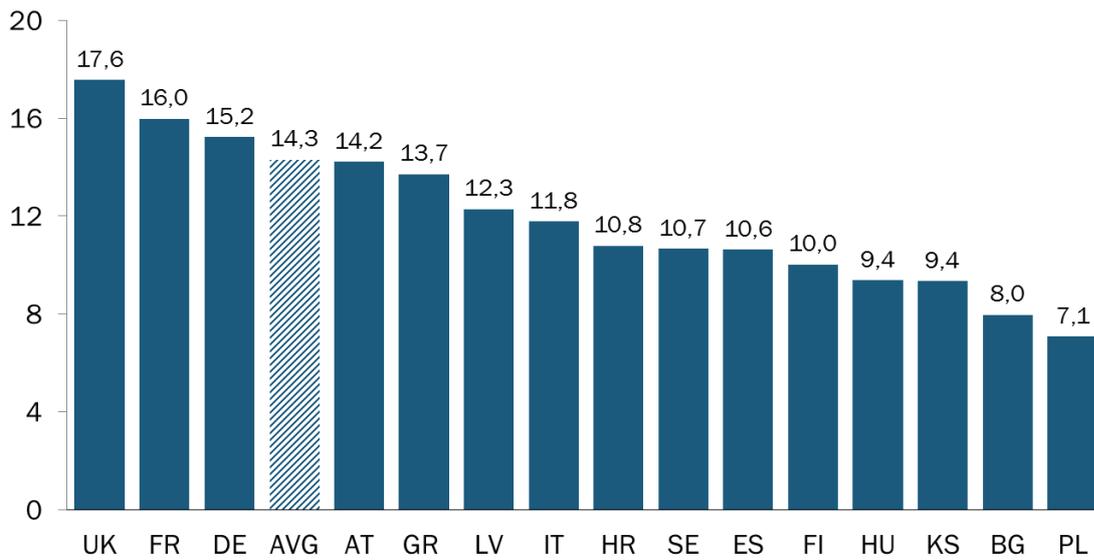
Revenue of freight railway undertakings in 2015 (euro cent per net tonne km)



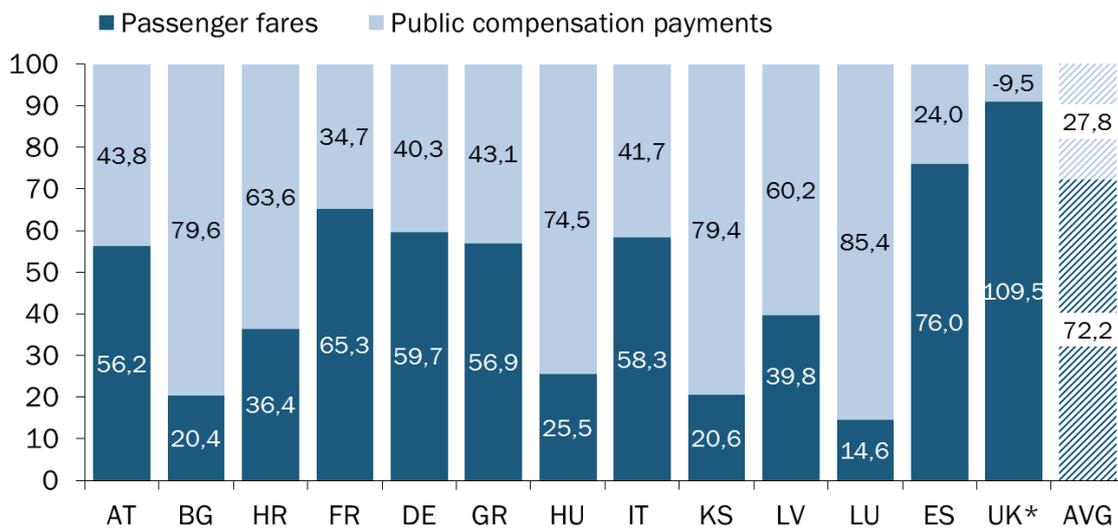
Revenue of passenger railway undertakings in 2015 (euro per train km)



Revenue of passenger railway undertakings in 2015 (euro cents per passenger km)

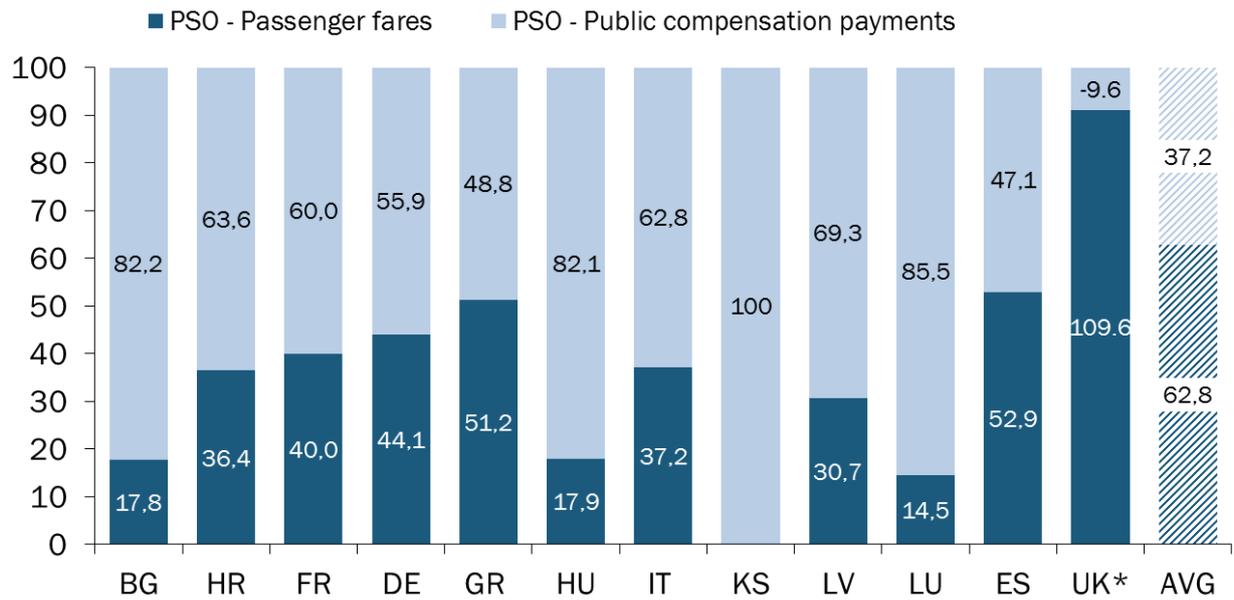


Source of revenue of passenger railway undertakings in 2015 (in %)



\* In UK, some RUs receive funds from the State, other RUs pay to the State. In sum, a payment of 9.5 % of total passenger fares is made to the State.

Source of revenue of passenger railway undertakings in 2015 (only PSO services, in %)



\* In UK, some RUs receive funds from the State, other RUs pay to the State. In sum, a payment of 9.6% of total passenger fares is made to the State.