

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

### **IRG-Rail**

#### **Working Programme 2017**

**9-10 November 2016**

IRG-Rail is the network of independent rail regulatory bodies from 29 European countries. The overall aim of IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railways market in Europe. IRG-Rail acts as a platform for cooperation, sharing of best practice on regulatory issues and promotion of a consistent application of the European regulatory framework.

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

## **I. Introduction**

International cooperation in railways is becoming increasingly important. It already exists between both railway undertakings and infrastructure managers, through their participation in European railway associations and fora.

Intensifying cooperation between national independent Rail Regulatory Bodies is also important in order to promote sustainable and effective competition in the railway sector and contribute to the development of a genuine European internal rail market. This can be achieved by fostering a consistent approach to the regulatory framework for railways in Europe, developing regulatory best practice, and speaking to stakeholders at the Community level with a single voice.

In June 2011, IRG-Rail was founded in The Hague by 15 independent Regulatory Bodies. Now the group has grown, and consists of Regulatory Bodies from 29 European countries. It has already become an important player, recognized by key stakeholders including the EU institutions and sector organizations. Through the publication of its position papers, input into legislative proposals and harmonized regulatory principles and practices, IRG-Rail has already proved its capability and efficiency.

In 2017 IRG-Rail will focus on:

- fulfilling the tasks provided by the Directive 2012/34/EU,
- enhancing our fact/data based approach while improving our data collection,
- contributing to the European Commission works on arising issues, especially those to be tackled with secondary legislation,
- anticipating the issues related to the implementation of the Fourth Railway Package and the achievement of the European single market,
- providing the European public debate with substantial opinions and analyses.

The major topics identified for the upcoming year are:

- As for rail freight corridors: clarification and strengthening of the regulators' role with respect to regulatory issues.
- As for service facilities: contribution to the upcoming implementing act aiming at

providing the regulators with clear rules and tools to ensure transparent and non-discriminatory access to service facilities.

- As for data collection: common work within IRG-Rail to harmonize definitions for collection and deepen analyses on specific topics.

- As for charges: building up of a strong common understanding on charging policies issues.

## **II. Working Programme 2017**

### **1. ACCESS WORKING GROUP**

#### **Rail Freight Corridors**

IRG-Rail will:

- closely follow the further process on the revision of the Regulation and provide further input on regulatory perspectives,
- discuss regulatory tasks and powers regarding the framework for capacity allocation,
- conduct a first meeting “Rail freight corridors” (Declaration of Rotterdam, 2016, annual meeting of RFCs),
- explore possibilities for facilitating and supporting the collection and publication of data for the market monitor report,
- support the publication of data, e.g. on the website of IRG Rail,
- encourage the harmonization of corridors based on market needs.

#### **Deliverables:**

- give input on the different steps of the initiative foreseen by the EU Commission with regard to the revision of the Regulation; this could cover contributions and input:
  - with regard to the evaluation of adjustment requirements and further fields of activities in this respect,
  - with regard to the impact assessment that the EU Commission plans to carry out in the first half of 2017,
  - in the phase of drafting proposals of the Regulation,

- develop if necessary a follow-up position paper on the revision of the Regulation,
  - with regard to strengthen and clarify the monitoring role of regulatory body;
- follow the extension of corridors and all other issues related to corridors and take action/provide output where appropriate;
  - in case of a common IRG-Rail approach, deliver proposals for data collection/publication formats as mentioned above.

### **Performance scheme**

IRG-Rail will organize a workshop with RBs and produce a review of performance regime in IRG Member states and develop guidelines on the monitoring role of RBs.

### **Capacity restrictions and maintenance work**

IRG-Rail will closely follow the further process on any initiative (in particular RNE TTR projects) concerning national and international traffic and provide further input on regulatory perspectives.

#### Deliverables:

- IRG-Rail will organize a workshop for RBs.

### **Delegated act for capacity allocation**

IRG-Rail will closely follow the further process on the Delegated Act and provide input on regulatory perspectives.

### **Cooperation with European Union Agency for Railways in matters related to the workfield of the WG Access**

Development of cooperation with European Union Agency for Railways groups:

- reduction of technical and operational barriers,
- support the harmonization of rules for international traffic,
- support transparency and availability of information at an early stage for the market,
- provide input on regulatory perspectives.

Deliverables:

IRG- Rail will

- organize the exchange with European Union Agency for Railways,
- provide an annual overview on the activities from regulatory point of view at the plenary,
- report the findings to other involved IRG Rail working groups.

## **2. SUB-GROUP ACCESS TO SERVICE FACILITIES**

**Access to service facilities: transparent and simplified access to service facilities**

Background:

The Sub-group Access to Service Facilities has drafted position papers concerning the upcoming implementing act of Directive 2012/34/EU dealing with service facilities. The main focus of the Sub-group Access to Service Facilities during next year will be to continue the work on the draft of implementing act of Directive 2012/34/EU that has been published in October 2016.

Issues to be addressed:

IRG-Rail will

- contribute to the development of the Commission's implementing act on service facilities,
- review the governance aspects of service facilities.

Deliverables:

- The working group will develop position papers on the developing draft of the implementing act.

## **3. EMERGING LEGISLATIVE PROPOSALS IN THE RAIL SECTOR WORKING GROUP**

Background:

Over the past four years the 'Legislative Developments' working group has mainly worked on the negotiation of the Fourth Railway Package. We have prepared six position papers which were adopted by the Plenary, and engaged closely with stakeholders and decision-

makers to ensure that the viewpoint and expertise of regulatory bodies is given due consideration.

The Fourth Railway Package has now been agreed and will enter into force in late 2016. IRG-Rail's concerns and priorities are reflected in the final texts of the governance regulation and PSO directive, and IRG-Rail welcomes the package as a step towards a better, more efficient rail sector. Appropriate domestic implementation and application of the new rules in each Member State will be key in the coming years, and regulatory bodies will have an important role in ensuring that this is fulfilled.

In 2017, the focus of the working group will therefore turn to implementation and application of the existing legislation (Recast Directive and market pillar of the Fourth Railway Package). We will also contribute to the negotiations on any pieces of secondary legislation brought forward by the Commission that do not fall within the purview of the working groups for charging, access or market monitoring. The legislative developments working group will also continue to identify and discuss any issues of common concern as they arise.

Issues to be addressed:

IRG-Rail will

- monitor and provide input on the development of any secondary legislation proposed by the European Commission, in particular an implementing act on decision-making by regulatory bodies,
- review progress on transposition of the legislation by Member States, addressing common concerns about implementation and application,
- survey the regulation of cases concerning cross-border services and cross-border infrastructure, liaising with other working groups as necessary.

Deliverables:

IRG-Rail will

- develop position papers on any relevant piece of secondary legislation as it emerges under the European Commission work plan, including potential implementing act on decision-making by regulatory bodies, and the 'economic equilibrium' test as applied to

domestic services, as and when necessary,

- carry out surveys, review case studies and/or hold workshops with stakeholders on specific issues of implementation of the Recast, in particular a workshop on regulatory bodies data collection powers, essential function requirements,
- conduct an initial 'gap-analysis' on Member State implementation of the Fourth Railway Package, identifying any areas of particular concern.

#### **4. CHARGES WORKING GROUP**

##### **Developing common approaches to charging issues**

###### Background:

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

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

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

###### Issues to be addressed:

IRG-Rail will

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

Deliverables:

- Updated version of the current charging applications for the use of infrastructure (introduction of a new development on regulation contracts between the State and the IM, strong efforts to include as many IRG-Rail Member States as possible),
- Direct costs, fixed costs and public compensations – European benchmark on railway financing (total system view of direct costs, fixed costs and public compensations in European railway financing).

## **5. SUB-GROUP CHARGES FOR SERVICE FACILITIES**

### **Review of service facilities charging**

Background:

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

Issues to be addressed:

IRG-Rail will

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

Deliverables:

- Guide of good practices and critical analysis of the answers, based on the findings of the questionnaire on service facilities charging policies,
- Common approach on the “viable alternative” notion (article 13 of the Directive 2012/34/UE) with the Access to service facilities working group.



## **6. MARKET MONITORING WORKING GROUP**

### **Background:**

Rail market monitoring is an important tool for setting direction to the activities of the Regulatory Bodies and stimulating market participants to improve their activities. Regulatory bodies have a formal duty to monitor competition in rail services markets. The Directive Recast foresees increased reporting activities at both European and national levels.

At the same time, the European commission monitors the development of the rail market in Europe through its rail market monitoring reports every two years, and PRIME (Platform for Rail Infrastructure Managers Europe) develops common key performance indicators for infrastructure managers.

The cooperation of Regulatory bodies on market monitoring aims at increasing comparability of national rail monitors, enhancing national monitoring by sharing experiences, and increasing knowledge of the European rail market.

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

IRG-Rail will

- finalize the fifth IRG-Rail market monitoring report and prepare the sixth IRG-Rail market monitoring report,
- keep working on the harmonization of definitions between the regulatory bodies and with other institutions like the European Commission, Eurostat, PRIME,
- keep working on the measurement of the level of competition on rail markets,
- deliver a thematic study dealing with service quality in passenger rail markets and aiming at providing:
  - an overview of the national institutions regulating and/or monitoring service quality for passengers (e.g. which indicators are monitored/regulated, which obligations and powers are given to which institutions);
  - a descriptive comparison of the way the punctuality indicator is defined in each country.

This thematic study will be mainly descriptive. It will result in a survey commonly created by members of the working group that will be fulfilled by each regulatory body.

It is expected to observe heterogeneity of national situations both in terms of obligations and powers given to regulatory bodies and in terms of definition of punctuality.

In that perspective, it is expected to show that comparisons of punctuality rates in national markets are irrelevant at this stage.

Deliverables:

- Publication in January 2017 of the fifth IRG-Rail market monitoring report, with a focus on the level of competition in European rail markets,
- Publication of a thematic study on service quality by August 2017.

## **STRATEGY COMMITTEE**

### **Renew the IRG-Rail strategy**

#### **Background:**

The Strategy Committee, set up by the Plenary in 2016, is empowered to build up a strategy for the upcoming years. It is composed of the representatives of the Members and chaired by the Chairperson of IRG-Rail. It seeks to identify key strategic issues likely to impact the role or activities of the Regulatory Bodies or the rail sector. The Strategy Committee will have to draft the IRG-Rail strategy for the period of three or more years and ensure that the annual Working Programme matches the latter. It may amend the annual Working Programme in order to take into consideration unforeseen issues.

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

- identify key regulatory and strategic issues likely to impact on IRG-Rail and the rail sector,
- act as central contact point for strategic issues and advices to the Chairperson,
- discuss and draft the annual Working Programme,
- anticipate and tackle all strategic issues arising.

#### **Deliverables:**

- IRG Rail multiannual strategy,
- Updated communication strategy,
- Propose changes to the Working Programme 2017, if necessary,
- Draft Working Programme 2018.

Given the new powers provided to the Strategy Committee by the Plenary Assembly, the latter will meet after the Plenary Assembly (December 2016 or January 2017) and propose changes to the Working Programme, if necessary.

The Strategy Committee should in particular set up a strategy for the issuance of certain papers aiming at influencing the discussions with the stakeholders, especially with the European Commission.

## **Annex**

### **Working Groups and Sub-Groups**

	<b>Name</b>	<b>(Co-) Chaired by</b>	<b>Contact person</b>
1	Access	Bundesnetzagentur	Wolfgang Groß
2	Access to Service Facilities Sub-Group	Bundesnetzagentur ACM	Christian Wolf Coen Timmerman
3	Market Monitoring	ARAFER	Aude Le Lannier
4	Emerging Legislative Proposals in the Rail Sector	Bundesnetzagentur ORR	Andrea Sanders-Winter Agnès Bonnet
5	Charges	ARAFER	John Moore
6	Charges for Service Facilities Sub-Group	Schienen-Control ARAFER	Andreas Himmel Mathias Laffont