

**Independent Regulators' Group – Rail**

**IRG-Rail**

**Work Programme 2015**

**Plenary Meeting**

**19-20 November 2014**

## **I. Introduction**

1. International cooperation in railways is becoming increasingly important. It already exists between both railway undertakings and infrastructure managers, through their participation in European railway associations and fora.
2. Intensifying cooperation between national independent Rail Regulatory Bodies is also important in order to promote sustainable and effective competition in the railway sector and contribute to the development of a genuine European internal rail market. This can be achieved by fostering a consistent approach to the regulatory framework for railways in Europe, developing regulatory best practice, and speaking to stakeholders at the Community level with a single voice.
3. In June 2011, IRG-Rail was founded in The Hague by 15 independent Regulatory Bodies. Two and a half years later the group has grown, and consists of Regulatory Bodies from 24 European countries plus Switzerland. It has already become an important player, recognized by key stakeholders including the EU Institutions and sector organisations. Through the publication of several position papers, input into legislative proposals, and harmonised regulatory principles and practices, IRG-Rail has already proved its capability and efficiency.
4. The 2015 work programme of the IRG-Rail intends to continue this successful start and seeks to further enhance its position in the railway sector. In 2015, IRG-Rail will continue to focus on the needs of passenger and freight customers, the promotion of competition, and improvements in rail performance and efficiency.
5. The group will continue to develop the constructive relationships with European institutions and sector representative groups that have been already been developed over the past years. IRG-Rail's cooperative relationships with other Regulatory Bodies and other rail organisations, such as CER, EIM, ERFA, EPTO, UNIFE, RNE and UITP, will continue to be pursued wherever such cooperation is in the interest of rail customers and the promotion of competition.
6. As in 2014, the work programme for 2015 will be based on the two following priority areas:
  - promoting and improving harmonisation;
  - addressing emerging challenges.
7. The first priority area focuses on the principal aim of IRG-Rail: enhanced cooperation among Regulatory Bodies and further improved harmonisation.
8. The second priority area addresses challenges stemming from changes in the institutional environment.
9. Potential topics for both areas include: proposals on how to handle/implement the freight regulation in practice, further harmonisation in the field of market monitoring,

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common approaches on charging issues, and input to legislative developments such as the ongoing Fourth Railway Package negotiations. Work, outlined below, will be carried out by four thematic working groups established by the Plenary.

10. An Advisory Steering Group has been set up to serve as an advisory group to accompany the IRG-Rail's present and future development. This group will continue to monitor the European agenda and set priorities for IRG-Rail work as necessary.

## **II. Work programme 2015**

### **1. Improving harmonisation**

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

### **ACCESS WORKING GROUP**

#### **Activity 1 - Rail freight corridors**

##### **Background:**

13. The Regulation (EU) No 913/2010 initiated the implementation of a European rail network for competitive freight consistent with the trans-European Transport Network (TEN-T). It sets out rules e.g. for the selection, organisation and management of the freight corridors. Six of these corridors are operable since November 2013, the three remaining will follow by November 2015.
14. Some regulatory tasks come along with the implementation of those corridors. IRG-Rail is involved in creating common approaches to all corridor issues, e.g. the establishment of new frameworks for the allocation of infrastructure capacity (Art. 14(1) of the Regulation), the establishment of corridor agreements or common rules for monitoring C-OSS (Art. 20 of the Regulation).
15. A challenging topic is the handling of multi-corridor issues. Where corridors are connected or railway undertakings use different corridors on their way to their destination, rules of cooperation and coordination have to be established in a harmonized and non-discriminatory way. Capacity shall be available for all RUs according to their needs.

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### Issues to be addressed:

16. IRG-Rail will:

- seek to secure that necessary rules of the national network statements will be reflected in the CID;
- continue with the exchange on the monitoring of Corridor OSS and corridor issues (especially for those corridors established in 2013);
- discuss regulatory tasks and powers regarding framework for capacity allocation;
- support cooperation agreements between regulators, especially proceed to a review and adaptation of corridor agreements in the case of multi-corridor issues and of the extension of rail freight corridors or of arrangements on the basis of Article 57 (2) of Directive 2012/34/EU.

### Deliverables:

- Review of existing cooperation agreements with regard to multi-corridor issues.
- Analysis and report on framework for capacity allocation and other corridor issues with regard to multi-corridor issues or on arrangements on the basis of Article 57 (2) of Directive 2012/34/EU.

## **Activity 2 – Implementing acts, especially framework agreements**

### Background:

17. The Directive 2012/34/EU enables the European Commission to adopt several implementing acts on differing aspects. IRG-Rail will follow the actions of the European Commission, address relevant topics and play an active part as stakeholder on the European level concerning access issues.
18. The topic of framework agreements and the implementing act as per Article 42 (8) of the Directive have been discussed with the European Commission and other stakeholders since 2013. For the time being no consensus could be reached regarding the topic. As framework agreements are an important instrument for the railway market IRG-Rail will follow the discussions on the European level, share its views and provide input.

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### Issues to be addressed:

19. IRG-Rail will:

- continue following the process of the implementing act on framework agreements;
- continue following the process of the implementing acts on all other access issues.

### Deliverables:

- Further analysis, intervention and discussion paper on the implementing act on framework agreements, if appropriate.
- Common positions on implementing acts on emerging access issues, if appropriate.

## **Activity 3 – Liberalisation of the rail passenger market**

### Background:

20. The market for international rail passenger transport has been opened in 2010. Railway undertakings were given the right to operate on an international level, including the possibility of carrying passengers on national sub-routes (“cabotage”) as from 1 January 2010. Nevertheless those transports still have a small market share. The 4<sup>th</sup> railway package addresses i.a. with the awarding of public service obligations the existing barriers for new passenger services and aims at creating a level playing field for incumbents versus new entrants. The 4<sup>th</sup> railway package therefore aims at creating the preconditions for more competition on the rail passenger market. Therewith connected access issues will be addressed by the Working Group Access.

### Issues to be addressed:

21. IRG-Rail will:

- exchange views and provide initial input on measures for facilitating access of international passenger services;
- make suggestions on how to improve competition in international passenger market.

### Deliverables:

- Position paper on measures for facilitating access for international passenger services.

### **SUB-WORKING GROUP ACCESS TO SERVICE FACILITIES**

#### **Activity 4 - Access to service facilities: transparent and simplified access to service facilities**

##### **Background:**

22. Regulatory issues concerning service facilities have gained importance since the Directive 2012/34/EU became effective. Therefore the Subgroup Access to Service Facilities drafted a respective position paper concerning the implementing act of Directive 2012/34/EU dealing with service facilities. Main topics were “transparency of access arrangements and charges”, “access application procedure, including procedure for conflicting requests”, “viable alternatives” and “role of the regulatory body”.
23. The main concern of the Subgroup Access to Service Facilities in the next year will still be the work on the implementing act of Directive 2012/34/EU. As this work is externally driven by the ideas and further steps of the Commission – which are not known yet – it is not possible to predetermine how much time the subgroup will be able to dedicate to other topics. The Commission envisages the completion of the draft legal text regarding the implementing act by the end of 2015.

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

24. IRG-Rail will:
  - contribute to the development of the Commission’s implementing act on service facilities;
  - work on a more detailed concept of viable alternatives;
  - review governance aspects of service facilities.

##### **Deliverables:**

- As described above, the process concerning the implementing act is not known yet. As a result it is not possible to describe in detail the next steps of the subgroup. Probably there will be a further evolution of the position paper depending on the future requirements of the Commission.

## 2. Emerging challenges

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

#### **Activity 5 – Providing input to European legislative proposals**

##### Background:

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

##### Issues to be addressed:

28. IRG-Rail will:

- closely follow the ongoing negotiation process on the Fourth Railway Package and provide further input on the development of the market pillar as necessary;
- provide input on the development of implementing acts;
- review the progress of transposition of the First Package Recast in Member States;

##### Deliverables:

- develop position papers on various regulatory aspects or topics of the Fourth Railway Package that might be raised during the negotiation process; in particular
  - develop a position paper on the EP Proposal concerning criteria for direct award of public service contracts; and

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- describe and share experiences on the various approaches on procurement of rolling stock;
- develop a position paper on the role of the regulatory bodies.
- develop position papers on the Commission's secondary legislation proposals to the Recast as appropriate and provide factual input on further implementing measures to the Recast, and in particular in relation to Regulatory Bodies principles and practices for making decisions.
- take stock of Recast implementation after June 2015 and review areas of interest.

## **CHARGES WORKING GROUP**

### **Activity 6 - Developing common approaches to charging issues**

#### **Background:**

29. Directive 2001/14/EC 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.
30. 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.
31. 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:**

##### 32. 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 current incremental or marginal costs;



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- seek to develop criteria to assess current mark-ups, market segments and the capability of the market to bear them as provided under article 32.1 of Directive 2012/34/EU;
- seek to develop a common understanding of the handling of scarcity and congestion charges under article 31.4 of Directive 2012/34/EU;
- provide input on the development of secondary legislation as part of the implementation of the Recast of the First Railway Package.

### Deliverables:

- Updated version of the 2013 review of current charging applications for the use of infrastructure (including results of the charging questionnaire on roles and powers of regulatory bodies);
- Position paper on market segment definition and criteria for assessment of mark-ups;
- Overview paper on congestion/scarcity/capacity charges;
- Common position papers on key aspects of upcoming EC implementing acts, in particular on cost directly incurred.

## **SUB-WORKING GROUP CHARGES FOR SERVICE FACILITIES**

### **Activity 7 - Review of service facilities charging**

#### Background:

33. 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:

34. 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?);

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- 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:

35. To report on service facilities charging:

- Overview of charging principles for passenger stations (1<sup>st</sup> step), freight terminals and maintenance facilities (2<sup>nd</sup> step).

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

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

##### **Activity 8 – Market monitoring**

#### Background:

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

#### Issues to be addressed:

38. IRG-Rail will:

- finish the third IRG-Rail market monitoring report and prepare the fourth IRG-Rail market monitoring report.
- continue to provide input for the RMMS implementing act (Article 15 of Directive 2012/34/EU). If necessary, the group will publish another position paper.
- inventorise and assess the impact of the Recast implementation on market monitoring. In particular, the working group will explore possible methods for the consultation of representatives of users of the rail freight and passenger transport services according to Article 56(7) of Directive 2012/34/EU.

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- continue to explore statistical and econometrical analysis of the performance of infrastructure managers and railway undertakings and improve current indicators.

Deliverables:

- Publication of the third IRG-Rail market monitoring report in early 2015;
- If necessary, publication of another position paper on the RMMS implementing act;
- Workshop on the impact of the Recast implementation on market monitoring.

## **ADVISORY STEERING GROUP**

### **Activity 9 - Manage activity of Advisory Steering Group**

#### **Background:**

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

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

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

#### **Deliverables:**

- Workshop(s) on regulatory best practices for IRG-Rail members involving the relevant working groups, e.g.
  - Workshop on control of network statements.

## Annex

### Working Groups and Sub-Working Groups

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