

Independent Regulators' Group – Rail

IRG – Rail

WORK PROGRAMME 2011/2012

9 June 2011

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1. Introduction

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

Intensifying cooperation between the national independent Rail Regulatory Bodies is important in order to promote sustainable and effective competition in the railway sector and contribute to the development of a 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 all relevant stakeholders at Community level with a single voice. Regulatory Bodies often face similar problems and via networking they can share experiences and jointly develop common solutions. By collaborating in such a network Regulatory Bodies become more visible, gain more influence on EU-level and serve as a source of practical and technical advice. They play an essential role in addressing common future regulatory challenges and improving their own performance and expertise through shared information, data and common practices.

2. Background

In early 2010, the Regulatory Bodies of Austria, Germany, Great Britain, Netherlands and Switzerland launched an initiative to create an informal network between independent Regulatory Bodies to exchange best practice and collaborate towards harmonisation of regulatory approaches.

The 2011/2012 work programme of the group is focused on getting the group up and running and will be built on the priorities set out by this programme. The group will aim to start and consolidate its structure and administrative arrangements in order to be able to work autonomously in due course.

IRG-Rail plans to focus on the needs of passenger and freight customers, the promotion of competition and improved rail performance and efficiency. The group therefore intends to build constructive relationships with the European institutions, and in particular with the European Commission. IRG-Rail will also initiate and nurture cooperative relationships with other Regulatory Bodies and other rail organisations, such as CER, EIM and RNE, wherever such cooperation is in the interests of rail customers and the promotion of competition.

The work programme for 2011/2012 is based on the following priority areas:

- promoting and improving harmonisation
- addressing emerging challenges

The first priority area focuses on the principal aim of IRG-Rail: enhanced cooperation among Regulatory Bodies and further improved harmonisation.

The second priority area addresses challenges stemming from change in the institutional environment.

Possible topics for both areas include: proposals on how to handle/implement the freight regulation, benchmarking, economic equilibrium, market monitoring and the recast of the First Package. Work, outlined below, will be carried out by the Regulatory Bodies working groups established by the Plenary.

To ensure continuity and coherence of activities, it is proposed that some aspects of the IRG-Rail work programme will become multiannual. IRG-Rail will start with a two year approach combined with an annual review. The items that qualify for a multiannual approach include benchmarking, market monitoring and the harmonisation of key regulatory approaches (non discrimination, regulatory accounting, and charging principles). In particular, IRG-Rail intends to review working arrangements and activities of the working groups by end 2012.

3. Work programme 2011/2012

3.1. Improving harmonisation

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.

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:

Activity 1 - Developing common positions on implementation of international freight corridors

Background

In order to ensure non-discriminatory access to international rail services, Article 20 of the freight regulation aims at ensuring efficient coordination between the Regulatory Bodies involved on the networks covered by the freight corridors. According to this new provision Regulatory Bodies must cooperate and exchange all necessary information with regard to the monitoring of competition in the rail freight corridors. They must also consult the Regulatory Bodies of other Member States, who have to provide and transfer all relevant information before taking decisions.

IRG-Rail will look into recommendations based on the Commission's handbook and national practices, keeping in mind that those are not binding and will be applicable on a voluntary basis.

Issues to be addressed:

IRG-Rail will:

- review national practices and evaluate what kind of complaints are likely to arise (denied path requests, inadequate network statements, unclear charging principles)
- develop common positions on key aspects of corridors, such as framework agreements, regulatory approach to network statements,
- develop common processes to handle appeals and complaints in relation to international train paths,
- produce a handbook providing common guidelines on regulatory approaches.

Deliverable:

- guidance on implementation of international freight corridors.

Activity 2 -Harmonisation of “economic equilibrium criteria”

Background

Directive 2007/58/EC (the Directive) of 23 October 2007 on the liberalisation of passenger services opened up the market in international passenger services from 1 January 2010. It allows international operators to pick up passengers at any station located on the international route and set them down at another, including stations located in the same Member State (known as 'cabotage'). Providers of new international rail passenger services have the right of access to the infrastructure subject to certain restrictions and meeting certain tests.

The Directive sets a number of roles for Regulatory Bodies that are required to cooperate to exchange information and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised.

Issues to be addressed

IRG-Rail will:

- develop common processes to share information when carrying out the economic equilibrium test envisaged in the Directive,
- develop common positions on the type of information required by Regulatory Bodies to carry out tests,
- consult and identify harmonised criteria to assess whether the economic equilibrium of a public service contract is compromised;.

- develop common understanding of principal purpose test envisaged in the Directive;
- monitor Commission's work on proposed recommendations for implementation of the EU Public Service Obligation Regulation 1370/2007;

Deliverable:

- Guidance on assessment of new international passenger services;
- Position paper on assessment of principal purpose test;
- Position paper on emerging European Commission's proposal.

Activity 3 – Developing common approach to market monitoring

Background

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, and in particular the rail transport market pursuant to article 10 of Directive 2001/12/EC. In addition, the First Package Recast proposal 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. The next report is due to be published at the end of 2011.

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 by discussing the implications of new data on the market. IRG-Rail aims to collect further data on international train movements.

IRG-Rail will develop a common list of indicators to produce a national monitor.

In 2012 IRG-Rail intends to examine whether the common list of indicators can be extended, investigate how we can make smart use of public information and to publish a common report. Additionally, to prepare this report, IRG-Rail will start a preparation exercise based on the latest national monitor reports.

Issues to be addressed

IRG-R will:

- seek to harmonise approaches to domestic market monitoring in suitable areas,
- develop a common format for reporting from the Regulatory Bodies to the working group / IRG-Rail,
- develop set of common indicators
- and a common report.

Deliverable:

- Common list of indicators by end 2011;
- Common questionnaire on qualitative aspects forwarded to relevant parties by mid 2012.
- Common Report by end 2012.

3.2. Emerging challenges

Activity 4 – Providing input for legislative proposals especially for the First Package Recast

Background

The current proposal for the First Package Recast seeks to enhance cross-border cooperation and improve market entry conditions. It requires Regulatory Bodies to cooperate for the purpose of adopting decisions on access or charging issues relating to international services, in particular establishing working arrangements for a consultation process and the development of common principles and practices. In the end of March 2011 the European Commission announced its intention to propose a fourth Railway Package 2012/2013 addressing essential issues like liberalisation of domestic passenger market, unbundling or a possible European Regulatory Body. Regulator's 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..

Issues to be addressed

IRG-Rail will:

- provide input on development of the proposal for the First Package Recast,
- possibly provide input on the upcoming Fourth Railway Package,
- promote strengthening of powers and independence of Regulatory Bodies

Deliverable:

- Position paper on Commission's draft proposal;
- further position papers during the negotiation process;
- possibly position paper on the Fourth Railway Package.

Activity 5 - Developing common approaches to charging issues

Background

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 between rail undertakings and in particular check whether charging principles are properly applied and whether separation of accounts is fully respected. The First Package Recast proposal 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 proposal.

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 common regulatory approach to examining infrastructure charges,
- seek to develop criteria to assess mark-ups and the capability of the market to bear them as provided under article 8.1 of Directive 2001/14/EC,
- compare accounting systems applicable in Europe and seek to harmonise approaches on accounting rules needed to ensure proper separation between regulated and non-regulated activities.

Deliverable:

- Benchmarking of current charging applications for the use of infrastructure (including description of charging regime, billing parameters, costs recovery principles, accounting rules, mark-ups, efficiency incentives);
- Guidance on a charging regime, definition of good practice.

ANNEX I

Working Groups

	Name	Chaired by	Contact person
1	International Rail Freight Corridors	Bundesnetzagentur	Wolfgang Gross
2	Economic Equilibrium/Principal Purpose	ORR	Agnès Bonnet
3	Market Monitoring	NMa	Claudine Vliegen
4	First Package Recast	Bundesnetzagentur	Andrea Sanders-Winter
5	Charges	ARAF	Sophie de Cara, Miguel Amaral