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Independent Regulators' Group – Rail

IRG-Rail

Annual Report 2017

March 2018

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Foreword by Anne Yvrande-Billon, the IRG-Rail Chair for 2017

As IRG-Rail Chair for 2017, I have the pleasure to share the IRG-Rail's Annual Report for 2017. It covers the activities performed by the Independent Regulators' Group throughout 2017, under the chairmanship of Arafer (the French Rail and Road Regulatory Body) and vice-chairmanship of ART (the Italian Transport Regulatory Body).

Through its regular inputs and high-quality contributions in 2017, IRG-Rail managed to tackle current regulatory challenges successfully and get prepared for the upcoming ones.. The group which worked in an independent and transparent manner, has demonstrated its long lasting commitment to enhancing regulatory practices on the European rail market.

As in previous years, we kept providing the sector, in particular the European commission, with relevant regulatory inputs. Throughout the year, we put important current subjects on the table such as conditions to effectively open market to competition (Economic Equilibrium Test, exemptions to competitive tendering for public service contracts) as well as upcoming challenges such as digitalization or multimodality. We are determined to continue playing a key role on any challenge the rail sector will face in the coming years with a view to implementing a genuine single market for rail and meeting the increasing need for a consistent regulatory framework in Europe.

Looking back, we can be proud of what we achieved in 2017. For its sixth anniversary, IRG-Rail has kept proving its effectiveness on enhancing regulatory practices and tools and stressed the importance of a data-driven approach to regulation. The group also gained in influence with the arrival of two new members. In May 2017, the Lithuanian Rail Regulatory Body joined us coming with significant experience on the communications sector and bringing the group new valuable regulatory expertise. The newly-established Czech Regulatory Body became involved in November, offering additional experience on liberalization of domestic markets since two new entrants entered the Czech rail market in 2013.

The adoption of the revised strategy for 2017-2020 is obviously the greatest success we had in 2017. We were able to successfully fulfill the mandate the Plenary Assembly had given to the Strategy Committee in 2016. Thanks to a proper identification of the changes that intervened since 2011, a common view on what should be achieved together and what may arise in the

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years to come, the group was capable, after more than six months of co-construction, to come up with a clear and consistent strategy, structured around three main areas:

- The liberalization of domestic passenger markets
- The regulation of cross-borders issues
- The adaptation of regulatory tools to the evolutions of markets and demand.

With the adoption of the new strategy, we also showed the stakeholders our strong willingness to continuously adapt our approach to market developments.

It is also an important step allowing our Working Groups to set up their own working programs in light of the strategy adopted at the Plenary. It enables the Working Groups to build up mid-term and long term objectives and to have a role in looking ahead the likely developments of the rail market. It also entails additional obligations and responsibilities that we must be ready to take on.

As we grow in number and experience and as we have adapted our strategy, we can be more proactive in tackling upcoming questions and putting forward highly-considered solutions for rail regulation.

I would like to thank my successor, Mr. Andrea Camanzi, and his team, for their support as vice-president, as well as everyone who provided their expertise to the group.

I express my best wishes to my successor and his vice-chair, Mr. Joao Carvalho, in chairing IRG-Rail and overseeing its further development during 2018.

At last, I would like to extend my thanks and gratitude to the ARAFER team, which has been successfully managed by Laurent Monjole, for their involvement and enthusiasm during this momentous year of chairmanship.

Anne Yvrande-Billon – Vice-Chair, French Rail and Road Regulatory Body

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A. Introduction

I. Goals of IRG-Rail

1. IRG-Rail is the Independent Rail Regulators' Group representing the independent rail Regulatory Bodies from 31 European countries. It was created on June 9, 2011 by 15 European countries¹ in order to enhance and promote cooperation between national independent rail Regulatory Bodies. Now the group has grown, and consists of Regulatory Bodies from 31 European countries. In 2017, we welcome Lithuania and Czech Republic.
2. 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.
3. It has already become an important player, recognized by key stakeholders including the European institutions and sector organizations. Through the publication of its position papers, inputs into legislative proposals and harmonized regulatory principles and practices, IRG-Rail has already proved its capability and efficiency.
4. The group's objectives are to:
 - enable effective and sustainable competition in the provision of passenger and freight rail transport;
 - proactively contribute to the development and application of the European regulatory framework for railways;
 - express the common position of Europe's rail Regulatory Bodies regarding the most important emerging issues in the European rail market.
5. On the basis of an open and transparent dialogue with all relevant parties, notably with the European Commission, the European Parliament and the main rail stakeholders, IRG-Rail, composed of regulatory professionals from all around Europe, strives to contribute its views, experience and efforts to the sustainable development of a single competitive European rail market.

¹ Austria, Croatia, Denmark, Estonia, France, the Former Yugoslav Republic of Macedonia, Germany, Hungary, Latvia, Luxembourg, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.

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II. Working Programme and Working Groups

6. The Working Groups listed below aim to tackle their respective topics by publishing IRG-Rail's view in documents such as position papers or discussion papers, reports or guidelines.

Working Group	Scope
Access Working Group	Covering access to rail network issues including paths allocation processes, barriers to enter the market, interoperability.
Access to services facilities	Covering access to service facilities issues and ensuring consistent application of the European legislation.
Charges Working Group	Dealing with charging matters in relation with railway infrastructure and rail-related services.
Charges for service facilities	Dealing with service facilities charging and seek for common practices in terms of service facilities' charging.
Legislative Developments Working Group	Dealing with issues stemming from new legislative instruments or initiatives proposed by the European Commission.
Market Monitoring Working Group	Collecting / analyzing data on the transport and rail sectors and setting an annual Market Monitoring Report.
Strategy Committee ²	Responsible for general coordination, monitoring and strategic orientation of the group.

7. In 2017, the Access Working Group focused on the development of European freight corridors in particular the development of key performance indicators. Furthermore, the group produced a review of performance schemes in Member states. The working group has also started working with the European Agency for Railways in order to build a common understanding of the remaining barriers across the European Union.
8. In 2017, the Access to service facilities Working Group followed closely the debate on the Implementing Act on access to service facilities and provided inputs throughout the

² The Advisory Steering Committee consists of representatives of Regulatory Bodies of the current, previous and next chair of IRG-Rail. Members of other Regulatory Bodies are also invited to participate.

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construction of this pivotal text.

9. The Charges Working Group continued to establish the basis for harmonization of charging principles and consistent regulatory practices. Charges are a key driver in ensuring efficient usage of infrastructure. Indeed, charging practices differ across Europe with Member states and infrastructure managers using different models for the funding of infrastructure and the design of charges. IRG-Rail does not seek absolute uniformity of charging regimes, but wants to ensure that charging methodologies are transparent, proportionate, non-discriminatory and consistent with charging principles laid down in Directive 2012/34/EU. In 2017, the group updated the review of charging practices for the minimum access package in Europe, covering more countries to get a better comprehensive overview of the different charging systems in Europe.
10. The Working Group on Charges for service facilities seeks for common practices in terms of service facilities' charging. Following this purpose, the group produced an overview on charging practices for access to service facilities and rail-related services in the IRG-Rail Member states.
11. The Legislative Developments Working Group mainly continued to focus on the implementation of the existing legislation (Recast Directive and market pillar of the Fourth Railway Package). The Working Group also organized workshops to explore and exchange best practices especially on PSO regulation and the issues covering the possibility of direct award of public service contracts under the new EU law laying down rail market opening to competition.
12. The Market Monitoring Working Group continued to work towards the harmonization of monitoring practices amongst IRG-Rail members. It produced the fifth market monitoring report with -for the first time- a focus on the effective level of competition on European rail markets.
13. The activities carried out in 2017 by the Working Groups are described in detail in part B of the Annual Report.
14. In May 2017, IRG-Rail adopted its new strategy for 2017-2020 outlining the main issues for the Regulatory Bodies with the completion of the liberalization of domestic markets

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and setting a clear strategy to meet the challenges of the railway sector in the coming years. The document is meant to be the guidelines of IRG-Rail's actions and aims to equip the Regulatory Bodies with powerful and reliable toolkit for their daily regulation.

15. In November 2017, IRG-Rail adopted the Working Programme for 2018 consistently reflecting the objectives of the Strategy Document (2017-2020).

16. Following the European context with the year of multimodality announced by the European Commissioner Violeta Bulc, IRG-Rail kicked-off the exchanges on multimodal regulation with a first workshop in December 2017. This workshop led the Regulatory Bodies to come up with a road map for 2018 regarding multimodal regulation identifying major stakes to be progressively tackled by the group.

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B. Overview of the Activities under the 2017 Working Programme

17. During the year, IRG-Rail continued to advance harmonization of the European regulators' activities and approaches, as well as tackling the questions and discussions arising from new institutional changes and legislative proposals from the European institutions. With these objectives in mind, the tasks set out in the Working Programme 2017 were achieved successfully. In order to inform all potential interested parties and for reasons of transparency, the corresponding position and discussion papers, as well as other relevant documents, are available on IRG-Rail's website.

I. Activities of the Access Working Group

18. The main focus of the Access Working Group's work is the development of freight corridors in accordance with the regulation concerning a European rail network for competitive freight (EU) No 913/2010). The Regulation sets out rules on, for example, the selection, organization and management of the freight corridors. Experience has been gained and the Working Group Access particularly highlighted the possibilities for facilitating and encouraging the harmonization of corridors based on market needs.

Activities in 2017

- Overview European performance schemes;
- KPIs for regulatory purpose on freight corridors;
- Work on capacity restrictions and maintenance work in light the delegated act for capacity allocation regarding temporary capacity restrictions;
- Collaboration with ERA.

II. Activities of the Working Group on Access to Service Facilities

19. Non-discriminatory access to service facilities is an integral part of a single rail transport market. Since its creation in 2014, the Working Group Access to Service Facilities, has principally addressed and influenced the development of the Implementing Act on access to service facilities (based on Article 13 (9) of Directive 2012/34/EU), which the Member states adopted in June 2017.

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Activities in 2017

- Contributed to the Implementing Act with inputs to all stakeholders on the Implementing Act (ENRRB, Bilateral meetings, railway undertakings, European Commission etc.).

III. Activities of the Charges Working Group

20. The main tasks of the IRG-Rail Charges Working Group are:

- to enhance the cooperation of national rail Regulatory Bodies in respect of railway charging issues, and therefore to aim at facilitating the development of common principles and practices for making decisions, as foreseen by the Directive 2012/34/EU;
- to increase a common understanding of charging principles across the European rail sector and to look into recommendations based on European legislation whilst taking into account national practices;
- to define good practices with respect to charging principles, to exchange information on general charging issues, and to provide a common opinion on the development of EU legislation on railway access charges.

Activities in 2017

- Publication of an updated review of charging practices for the minimum access package in IRG-Rail Member states.

IV. Activities of the Working Group on Charges for Service Facilities

21. The Implementing Act on service facilities highlights the need for cooperation in the area of charging principles to be applied to service facilities across the European rail sector

22. The main tasks of the IRG-Rail Working Group on Charges for Service Facilities are:

- to develop a common understanding of the prescriptions described by the European directive regarding charging principles for service facilities;
- to share key issues on service facility charges and to enhance the cooperation of the national rail Regulatory Bodies.

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Activities in 2017

- The Working Group on Charges for Service Facilities produced an overview document concerning charging practices to service facilities and rail-related services in the IRG-Rail Member states.

V. Activities of the Legislative Developments Working Group

23. In 2017, IRG-Rail's Legislative Developments Working Group focused on current and upcoming European legislative proposals and Implementing Acts. The on-going negotiations and initiatives concerning the development of the Single European Rail Market on the basis of the European Commission's Fourth Railway Package and the Recast Directive were the main focus of the group's work.

Activities in 2017

- Following European Commission's work on cooperation between Regulatory Bodies and on the economic equilibrium test;
- Work on PSO regulation the possibility of direct award of public service contracts.

VI. Activities of the Market Monitoring Group

24. The IRG-Rail Market Monitoring Working Group aims at increasing the comparability of national rail monitoring, enhancing national monitoring through shared experience, and increased knowledge of the European rail market through discussion of the implications of new market data.

Activities in 2017:

- Publication of the fifth IRG-Rail market monitoring report in early 2017;
- Publication of the revised market monitoring guidelines.

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C. Organizational Issues

I. Representation and Communication

25. IRG-Rail is strongly committed to ensuring that independent rail Regulatory Bodies develop and implement best regulatory practice and therefore is keen to approach non-members with the aim of supporting their participation in the group's activities with a view to eventually joining IRG-Rail. Rail Regulatory Bodies from 31 countries are now regularly communicating and exchanging information on topics of common interest. This growth in membership increases the value of IRG-Rail's existence for each member and helps fostering the development of a single European railway market.
26. As in previous years, the Chair and Vice-Chair had fruitful exchanges with some of the main rail European stakeholders, such as EIM, CER, UNIFE, RNE, ERFA and EPTO, allowing them to present IRG-Rail's views on the most relevant topics in the European rail market. Workshops, bilateral meetings as well as conferences brought all these players together providing a platform bringing different interest closer and fostering a better understanding on crucial issues. A new cooperation has also been started with the European Agency for Railways that is meant to combine both experiences on competition issues to come up with relevant market barriers inventory at the end of the year 2018.
27. As a result, cooperation between legislators, infrastructure managers, regulators, rail operators has deepened, thus fostering the overall contribution to the development of tomorrow's railway sector in Europe.
28. Over the years, IRG-Rail has developed close relations with the European Commission, through bilateral meetings and in meetings such as those of the ENRRB ("European Network of Rail Regulatory Bodies") where IRG-Rail presents its past and future activities, the topics on which it will take a position, and the related deliverables.
29. All the documents published by IRG-Rail in 2017 are available on its website.

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II. Information about Elections and Plenary Meetings

1. Elections

26. According to the IRG-Rail Memorandum of Understanding the group is represented by a Chair and a Vice-Chair, who are both appointed for a term of one year. Each year, the Plenary Assembly elects a representative amongst its members to be IRG-Rail's Vice-Chair during the following year and its Chair the year after.

27. From January to December 2017, Ms. Anne Yvrande-Billon of Arafer, the French Rail and Road Regulatory Agency, was IRG-Rail Chair. During that year Mr. Andrea Camanzi, the President of ART, the Italian Rail Regulatory Body, served as IRG-Rail Vice-Chair. During the November 2017 Plenary Meeting in Paris, Joao Carvalho, President of AMT, the president of the Portuguese Rail Regulatory Body, was appointed Vice-Chair for 2018.

2. Plenary Meetings

28. The Plenary Assembly is composed of the Heads of the Regulatory Bodies composing IRG-Rail and/or any senior executive designated by the relevant head.

29. The main tasks of the Plenary Assembly are to:

- take the necessary decisions in order to comply with IRG-Rail's objectives;
- approve relevant documents;
- admit new members and/or exclude members;
- approve any amendments to the Memorandum of Understanding;
- adopt and/or amend its own rules of procedure and/or working arrangements;
- approve the annual Working Programme and monitor progress against it;
- appoint its Chair and Vice-Chair.

30. In 2017, two Plenary Meetings took place:

- On 12 April in Paris, hosted by Arafer
- On 23 and 24 November in Paris, hosted by Arafer

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Annex I – Published Documents³

2017:

- IRG-Rail (17) 1 – Fifth annual Market Monitoring Report
- IRG-Rail (17) 2 – Strategy Document 2017-2020
- IRG-Rail (17) 3 – List of key performance indicators
- IRG-Rail (17) 4 – Overview on Performance schemes
- IRG-Rail (17) 5 - Overview on charging practices for access to service facilities and rail related services
- IRG-Rail (17) 6 - Overview about long distance passenger traffic
- IRG-Rail (17) 7 – IRG-Rail Working Programme 2018

³ <http://irg-rail.eu/irg/documents/position-papers/166,2017.html>

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Annex II – Members of IRG-Rail

Austria

Schiene-Control GmbH

Belgium

Service de Régulation du Transport ferroviaire et de l'Exploitation de l'Aéroport de Bruxelles-National

Bulgaria

Изпълнителна агенция "Железопътна администрация"
(Executive Agency - Railway Administration)

Croatia

HAKOM – Hrvatska regulatorna agencija za mrežne djelatnosti
(Croatian Regulatory Authority for Network Industries)

Czech Republic

UPDI

Denmark

Jernbanenævnet (Danish Railway Regulatory Body)

Estonia

Konkurentsiamet (Estonian Competition Authority)

Finland

Liikenteen turvallisuusvirasto Trafi (Finnish Transport Safety Agency)

Former Yugoslav Republic of Macedonia

ARTZU - Agencija Za Regulaciju Tržišta Željezničkih Usluga (Rail Market Regulatory Agency)

France

ARAFER - Autorité de Régulation des Activités Ferroviaires

Germany

BNetzA - Bundesnetzagentur

Greece

RAS - Ρυθμιστική Αρχή Σιδηροδρόμων (Regulatory Authority for Railways)

Hungary

NKH - Nemzeti Közlekedési Hatóság (National Transport Authority)

Italy

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ART - Autorità di Regolazione dei Trasporti

Kosovo

ARH - Autoriteti Rregullativ i Hekurudhave (Railway Regulatory Authority)

Latvia

State Railway Administration of Latvian Republic &

PUC - Sabiedrisko pakalpojumu regulēšanas komisija (Public Utilities Commission)

Lithuania

<http://www.rrt.lt/en/home.html>

RRT – Communication Regulatory Authority

Luxembourg

ILR - Institut Luxembourgeois de Régulation

Netherlands

ACM - Autoriteit Consument & Markt (Authority for Consumers and Markets)

Norway

SJT - Statens Jernbanetilsyn (Norwegian Railway Authority)

Poland

UTK - Urząd Transportu Kolejowego (Office of Rail Transportation)

Romania

Romania Consiliul Concurentei (Railway Supervision Council)

Slovakia

DU - Dopravný úrad (Transport Authority)

Slovenia

APEK - Agencija Za Koomunikacijska Omrežja In Storitve Republike Slovenije

(Agency for Communications Networks and Services of the Republic of Slovenia)

Spain

CNMC - Comisión Nacional de los Mercados y la Competencia

Sweden

Transportstyrelsen (Swedish Transport Agency)

Switzerland

SKE - Schiedskommission im Eisenbahnverkehr

United Kingdom

ORR - Office of Rail and Road