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Independent Regulators' Group – Rail

IRG-Rail

Annual Report 2015

April 2016

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Foreword of the Chair

It is a pleasure to present the 2015 IRG-Rail annual report, which describes all the activities of IRG-Rail members under the chairmanship of ACM (the Dutch regulatory body) and vice-chair UTK (the Polish regulatory body).

IRG-Rail has gone from strength to strength since its establishment in 2011. In 2015, we welcomed Romania as the 26th member of IRG-Rail. We would like to invite any independent European rail regulators that are not yet members of IRG-Rail to join us. In 2016, we will celebrate our fifth anniversary, which will more or less mean that IRG-Rail will be making its first steps into adulthood.

Experience has shown that IRG-Rail creates a fruitful cooperation platform for colleagues allowing them to engage actively and discuss all kinds of rail-related issues in an inspiring environment.

In 2015, the activities of IRG-Rail were once again focused on closer cooperation between independent national rail regulatory bodies. Through collaboration, IRG-Rail seeks to influence and implement the European regulatory framework helping to create a genuine internal rail market, and to develop regulatory best practices. In addition, we wish to speak at the Community level with a single and strong voice.

At a more practical level, in 2015, we organised several meetings with many stakeholders such as Members of the European Parliament, staff of the European Commission and various organisations representing the railway sector. During these meetings, we discussed our positions as well as current rail developments.

In 2015, our cooperation was dominated by three major topics: the implementation of the Recast Directive, the negotiations on the Fourth Package, and the implementation of all nine rail freight corridors.

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With the implementation of the Recast, all regulatory bodies have been challenged to develop their competences even further. In particular, some of the issues that were discussed in 2015 covered the implementing acts introduced by the Recast. In this domain, IRG-Rail published a 2nd Position Paper on considerations for an implementing act on procedures and criteria for access to service facilities. We discussed our position in a constructive way with the European Commission and other stakeholders.

We followed closely the on-going negotiations on the market pillar of the Fourth Package which focused on the governance and Public Service Contracts (PSO) dossiers. At the IRG-Rail plenary meeting in April (The Hague), we adopted a position paper on the Dutch Presidency proposal for performance-based direct award of public service contracts. In this position paper, IRG-Rail stressed that the procedure for direct award should be transparent and properly focused on improving efficiency.

At the plenary meeting in November (Rotterdam), IRG-Rail also adopted a common initial opinion on the functioning of the rail freight transport market. We observed that European rail freight transport did not yet meet the criteria for a well-functioning market. This initial paper offered ideas for improvements regarding the position of the freight market and of all stakeholders involved. The paper has since triggered substantive talks with the sector.

Last but not least, we have continued to publish the annual market monitoring reports that have become increasingly more precise and well-known in the market.

Finally I would also like to take this opportunity to wish our colleagues of the Polish regulatory body (UTK) a successful chairmanship for 2016.

Henk Don – IRG-Rail Chair 2015, Board member of the Netherlands Authority for Consumers and Markets.

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A. Introduction

I. Goals of IRG-Rail

1. IRG-Rail is the Independent Rail Regulators' Group, an association representing the independent rail regulatory bodies of 26 European countries. It was created on June 9, 2011 by 15 European countries¹, with the aim of enhancing and promoting cooperation between national independent rail regulatory bodies. Since its foundation, the independent rail regulatory bodies from Finland, Greece, Slovakia, Slovenia, Spain, Poland, Bulgaria, Belgium, Kosovo, Italy and Romania also have become members.

2. 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.

3. 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. Work Programme and Working Groups

4. 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 issues in particular with regard to freight corridors and access to service facilities |
| Charges Working Group | Dealing with charging matters in relation with railway infrastructure and rail-related services |
| Legislative Developments Working Group | Dealing with issues stemming from new legislative instruments or initiatives proposed by the European Commission |
| Market Monitoring Working Group | Working on general market monitoring topics |
| Advisory Steering Committee ² | Responsible for general coordination, monitoring and strategic orientation |

5. In 2015, the Access Working Group focused on the development of European freight corridors, and the implementation of Regulation n° 913/2010. It published a paper with ‘Initial thoughts on the revision of the freight corridor regulation’. Furthermore, it issued an overview about long distance passenger traffic. The sub-working group access to service facilities produced a position paper on service facilities.

6. The Charges Working Group continued to establish the basis for harmonisation 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

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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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 2015, the working group produced a review of charging practices in Europe. The sub-group on charging of service facilities produced an overview on charges for passenger stations.

7. The Legislative Developments Working Group mainly continued to focus on the Fourth Railway Package and produced three position papers; a position paper on the new proposals concerning governance and the award of public service contracts with a strong focus on the role of the regulatory body; a second position paper commenting on the proposal for a performance based direct award of public service contracts, and a third position paper on competitive tendering for public service contracts. The working group also organised a workshop to explore and exchange best practice on the review of network statements by regulatory bodies.
8. The Market Monitoring Working Group continued to work towards the harmonisation of monitoring practices amongst IRG-Rail members. It produced a Revision on Monitoring Guidelines and the 3rd IRG-Rail Market Monitoring Report 2014.
9. The 2015 activities of all these working groups are described in detail in part B of this Annual Report.
10. In November 2015, IRG-Rail adopted the new work programme for 2016. During the plenary meeting, it was proposed to investigate whether it was necessary to revise the actual working arrangements in order to meet the new tasks and challenges that regulatory bodies will face in the following years.

B. Overview of the Activities under the 2015 Work Programme

11. During the year, IRG-Rail continued to advance harmonisation 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 Work Programme 2015 were all 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, have been published on IRG-Rail's website.

I. Activities of the Access Working Group

12. A main focus of the work of the Access Working Group 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, organisation and management of the freight corridors. Some experience has now been gained, as six of these corridors have been operating since November 2013, and a further three corridors from November 2015. Next year the regulatory bodies in charge of monitoring access to infrastructure will further focus on capacity allocation, traffic management, coordination of engineering works, and performances regimes.

Activities in 2015

- Publication of Initial thoughts on revision of the freight corridor regulation
- Publication of an overview about long distance passenger traffic

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

13. Non-discriminatory access to service facilities is an integral part of a single rail transport market. In 2014, IRG-Rail established a Sub-Working Group Access to Service Facilities, principally to address and influence the development of the forthcoming implementing act on access to service facilities (based on Article 13 (9) of Directive 2012/34/EU), which the European Commission has scheduled for 2016. The group is also working to

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harmonize and establish best regulatory practices and is planning a review of governance aspects of service facilities.

Activities in 2015

- Publication of a Position Paper on considerations for an implementing act on procedures and criteria for access to service facilities.

III. Activities of the Charges Working Group

14. 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 2015

- Publication of an updated review of charging practices for the minimum access package in Europe.

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

15. The main tasks of the IRG-Rail Sub-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.

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- to share key issues on service facility charges and to enhance the cooperation of the national rail regulatory bodies.

Activities in 2015

- In 2015, the Working Sub-Group on Charges for Service Facilities produced an overview document concerning principles for charges for access to passenger stations. The overview document was adopted by the IRG-Rail Plenary Meeting in November 2015, as was the working programme for the Sub-Group for 2016.

V. Activities of the Legislative Developments Working Group

16. In 2015, 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 (published on 30 January 2013) were the main focus of the group's work.

Activities in 2015

- Publication of a position paper on competitive tendering for public service contracts (April 2015). This focused on the potential benefits of competitive tendering, and the framework conditions that are necessary for competitive award to flourish;
- Publication of a position paper on performance-based direct award of Public Service Contracts (July 2015). This paper focused on the proposals put forward in the Transport Council by the Dutch government, which called for exemptions from competitive award on the basis of performance and efficiency improvements;
- Publication of a position paper on the new proposals concerning governance and the award of public service contracts, with a strong focus on the role of the regulatory body (November 2015). This final paper focused on the 'general approach' adopted by transport ministers in October 2015, and highlighted where the fundamental principles of an open rail market were at risk. It also focused on the key role of regulatory bodies.

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17. In addition, the legislative developments working group identified critical aspects of market liberalisation. A survey on the different approaches to rolling stock availability was conducted in autumn 2015, and we expect to publish the findings in 2016. We also held a workshop on network statements and the role of regulatory bodies in reviewing these documents. Lastly, following implementation of the Recast, we conducted a survey of the different principles and procedures followed by regulatory bodies in their decision-making. We anticipate developing each of these work streams in 2016.

VI. Activities of the Market Monitoring Group

18. 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 2015:

- Publication of the third IRG-Rail market monitoring report in early 2015;
- Publication of the revised market monitoring guidelines;
- Organisation of a workshop on the topic “consultation of users” regarding article 56 of the implementing act 2012/34/EU

19. On 8 September 2015 IRG-Rail gave a presentation at the KPI working group of the Platform for European Rail Infrastructure Managers (PRIME) in London.

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C. Organisational Issues

I. Representation and Communication

20. 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. In November 2015, the Chair was very pleased to welcome as a new member the Romanian Railway Supervision Council, which is a multimodal regulator with responsibilities in different transport sectors (rail, road, airports, maritime, taxi, local and regional transport). Rail regulatory bodies from 26 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 to foster the development of a single European railway market.
21. As in previous years, the Chair and Vice-Chair have 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. As a result, cooperation between legislators, infrastructure managers, regulators, rail operators, etc. has deepened, thus fostering the overall contribution to the development of tomorrow's railway sector in Europe.
22. 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.
23. The European Commission has created a new "Platform" for information exchange and collaboration on some issues between ENRRB and the Platform for European Rail Infrastructure Managers (PRIME). The first of a series of meetings has taken part in London on 8 September 2015, chaired by the European Commission, and several members of IRG-Rail actively participated in this meeting.

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24. IRG-Rail also exchanges its views on a regular basis with members of the European Parliament, notably with regards to the proposed amendments to the Fourth Railway Package.

25. All the documents published by IRG-Rail in 2015 can be found on its website³.

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 2015, Mr Henk Don, of the Netherlands Authority for Consumers and Markets, was the Chair of IRG-Rail. During that year Mr. Krzysztof Dyl, the President of UTK, the Polish Rail Regulatory Body, served as IRG-Rail Vice-Chair. During the November 2015 plenary meeting in Rotterdam, Ms. Anne Yvrande-Billon of ARAFER, the French Rail and Road Regulatory Agency was appointed Vice-Chair for 2016.

³ <http://www.irg-rail.eu/public-documents/2015/>

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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 work programme and monitor progress against it;
- appoint its Chair and Vice-Chair.

30. In 2015, two plenary meetings took place:

- On 14 and 15 April in The Hague, hosted by ACM
- On 11 and 12 November in Rotterdam, hosted by ACM

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Annex I – Published Documents⁴

2015:

IRG-Rail (15) 12 - Work Programme 2016

IRG-Rail (15) 11 - Revision monitoring guidelines

IRG-Rail (15) 10 - Review of charging practices in Europe

IRG-Rail (15) 9 - Paper Initial thoughts on revision freight corridor regulation

IRG-Rail (15) 8 - Overview on Charges for passenger stations

IRG-Rail (15) 7 - Overview about long distance passenger traffic

IRG-Rail (15) 6 - 4RP Final Position Paper

IRG-Rail (15) 5 - Position Paper Performance based Direct Award of Public Service Contracts

IRG-Rail (15) 3 - Position paper competitive tendering for public service contracts

IRG-Rail (15) 4 - Position Paper Service facilities

IRG-Rail (15) 2 - 3rd IRG-Rail Market Monitoring Report 2014

IRG-Rail (15) 2a_rev1 - 3rd IRG-Rail Market Monitoring Report - Annex

IRG-Rail (15) 1 - Annual Report 2014

⁴ <http://www.irg-rail.eu/public-documents/2015/>

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Annex II – Members of IRG-Rail

Austria

Schienen-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)

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

ART - Autorità di Regolazione dei Trasporti

Kosovo

ARH - Autoriteti Rregullativ i Hekurudhave (Railway Regulatory Authority)

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Latvia

State Railway Administration of Latvian Republic &
PUC - Sabiedrisko pakalpojumu regulēšanas komisija (Public Utilities Commission)

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 Concurenței (Railway Supervision Council)

Slovakia

DU - Dopravný úrad (Transport Authority)

Slovenia

APEK - Agencija Za Kómunikacijska 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