

Independent Regulators' Group – Rail

IRG–Rail

Working Group Market Monitoring

Position Paper

**on the revision of the Commission Implementing Regulation (EU) 2015/1100 of
7 July 2015 on the reporting obligations of the Member States in the framework of
rail market monitoring**

March 2018

I. Introduction

According to article 15(2) of the Directive 2012/34/EU about the scope of market monitoring, the Commission shall closely involve representatives of Regulatory Bodies (RBs) so that they are better able to monitor the development of the railway sector and the evolution of the market, to assess the effect of the measures adopted and to analyse the impact of the measures planned by the Commission.

The preparation and adoption of the Regulation 2015/1100 (Regulation) was closely followed by the Regulatory Bodies cooperating in the framework of Independent Regulators' Group – Rail (IRG-Rail), which provided position papers on the upcoming draft implementing act on Rail Market Monitoring Scheme (RMMS) and on basic principles of market monitoring¹ as well as on the definitions used in the RMMS questionnaire of the European Commission².

At the 34th meeting of the Working Group Rail Market Monitoring in the framework of the Single European Railway Area Committee (Directive 2012/34/EU) on the 5th of October 2017, the European Commission provided an indicative timeline for the revision of the Regulation 2015/1100.

Taking advantage of this opportunity, IRG-Rail thinks that it is of particular importance to make data collected by Member States across Europe reliable and consistent.

Given the importance of data quality for the rail market supervision carried out by Regulatory Bodies, IRG-Rail is happy to support any initiative contributing to enhance data collection. Within IRG-Rail, Regulatory Bodies work together to develop definitions which enable to reflect the market. The annual IRG-Rail market monitoring report aims at contributing to a better understanding of both European and domestic markets. Based on this experience, IRG-Rail is able to provide a broad and clear picture on the heterogeneity shown in Member States when it comes to definitions and conversely the way of solving these difficulties when possible.

The following comments are motivated by the need for better consistency in respect of data collection for the rail market and enhanced functioning of rail market monitoring under the Regulation:

¹ <https://www.irg-rail.eu/irg/documents/market-monitoring/41,2013.html>

² <https://www.irg-rail.eu/irg/documents/market-monitoring/40,2014.html>

II. Recitals and definitions

Recitals

1. **Point 5** states that “to compile the data required in the questionnaire, Member States should cooperate with social partners, users, regulatory bodies and other relevant competent authorities at national level”.

As regulatory bodies are becoming increasingly involved in data collection, IRG-Rail would support a provision enhancing the duties for Member States (or more precisely governments) to cooperate with Regulatory Bodies within the scope of rail market monitoring.

Such a cooperation may help reducing the administrative burden on Railway Undertakings (RUs) and Infrastructure Managers (IMs) which may occur when similar data has to be provided to different public agencies at different times based on different definitions.

Definitions

2. **Article 2** lists the definitions applicable. As an introduction, IRG-Rail would like to point out some inconsistencies as for the definitions used under TRAMOS IT tool for the yearly submission of RMMS data. Some definitions appear to go beyond or be more restrictive compared to those provided for by the current Regulation.

1. IRG-Rail asks for consistent definitions between TRAMOS and the Regulation so as to ease the data setting and collection and improve the quality of data in the end.

However TRAMOS could be used to provide solutions that would ease the reporting process.

2. IRG-Rail considers that more overall guidance on the scope is needed – which should be consistently implemented throughout the Regulation, rather than having specific scope for each section. This should be explained in a guidance document or in TRAMOS.

3. **Station** is defined as a location on a railway where a passenger train service can start, stop or end.

1. IRG-Rail proposes to clarify this definition, e.g. by adding that a station enables passengers to get on or off the train. Otherwise also technical stations where trains start their route before getting to first scheduled station could be considered.

4. **Freight terminal** is defined as a place equipped for the transshipment and storage of intermodal transport units, where at least one of the modes of transport is rail.

1. IRG-Rail suggests that the definition of intermodal should be provided (explaining for instance whether intermodal is understood in different way than multimodal).

5. **Maintenance** is defined as non-capital expenditure that the infrastructure manager carries out in order to maintain the condition and capability of the existing infrastructure.

1. IRG-Rail proposes to add that “maintenance” means non-capital expenditure or Operational Expenditure (OPEX).

There is a strict differentiation between CAPEX and OPEX. Therefore IRG-Rail would like to have this represented in the wording of the Regulation as well.

6. Renewals are defined as capital expenditure on a major substitution work on the existing infrastructure which does not change its overall performance.

Upgrades are defined as capital expenditure on a major modification work of the infrastructure which improves its overall performance.

New infrastructure is defined as capital expenditure on the projects for construction of new infrastructure installations.

1. IRG-Rail proposes to add that capital expenditure means CAPEX.

There is a strict differentiation between CAPEX and OPEX. Therefore IRG-Rail would like to have this represented in the wording of the Regulation as well.

III. Article 3

1. Point 3 of the Article 3 states that “where a railway undertaking operates in more than one Member State, it shall provide the national authorities with separate data for each Member State in which it operates”.

1. IRG-Rail suggests that there should be a duty of cooperation (including exchange of information) between Member States, including Regulatory Bodies in order to solve the issue of blind spots in operational data of RUs in foreign countries, in particular when such blind spots remain in spite of legal obligations on market players and enforcement measures by the competent Regulatory Bodies. The effectiveness of RBs’ powers in this respect is currently limited since the enforcement powers are heterogeneous among the Members States. It may be useful to make these powers more consistent in the months to come through a dedicated text for instance.

IV. Annex - questionnaire

1. General remark about the units of measurement:

1. IRG-Rail considers that units of measure should be consistent throughout the whole annex as it is easier to exploit the data.

2. IRG-Rail suggests that in order to avoid magnitude errors caused by alternating between thousand and million units, data is requested in actual numbers (e.g. 1,234,567 euros rather than 1.2 million euros). Where fully accurate data is not available rounded figures should be provided (e.g. 1,200,000 passenger km).

2. Question 1.2. Infrastructure managers' revenue from infrastructure, station and terminal charges

1. IRG-Rail proposes that Member States should specify in comments what accounts for “other charges collected from passenger and freight train operators” in their answers.

3. Question 2.3. Successful and rejected path allocations for various services

1. IRG-Rail considers that this question should be more precise. It should be clarified that it is about the number of trains that run on accepted requests in the year or timetable of the reporting year (timetable is from the second Sunday of December, not from the beginning of the year). Otherwise, there can be many trains on one path allocation. The problem with rejected requests is that there are only few of them after coordination process, but there can be many before. It should be clarified how this should be interpreted (there is a difference between the Regulation and TRAMOS between “following” and “after” the coordination process). It should be noted that train path requests can be rejected not only while setting the timetable, but also during the functioning of the timetable when they are changed to ad hoc requests, so the difference between scheduled and ad hoc requests in these cases should be clarified.

4. Question 3. Expenditure on infrastructure

1. IRG-Rail would like more clarification on the part of major stations and freight terminals that should be included. According to Annex I of the Directive 2012/34/EU infrastructure consists of track, passenger and goods platforms, including in passenger stations and freight terminals. On the other hand, in Annex II point 2 stations and freight terminals are also mentioned as service facility. This may raise questions on the limit between infrastructure and service facility, and if only expenditure for the items listed in Annex I should be reported or for the entire service facility. This concern applies also to question 11.1.

5. Question 4.1. Revenue and volumes of passenger and freight services

- “Total revenue of railway undertakings from transport services”:
 1. IRG-Rail would welcome clarifying whether this category includes the compensations from state or regional authorities for reduced tickets fares (e.g. for students). IRG-Rail proposes to include all compensations.

6. Question 5.1. Punctuality and cancellations of passenger services

1. IRG-Rail states that it should be defined that services mean trains (train services), not paths in order to avoid confusion and divergences in answers.

7. Question 6.1. Volume of services and compensation paid for services provided under PSOs in different market segments

- “International services provided under PSOs”:

1. IRG-Rail points out that the data collection of the railway undertakings is based on public service contracts. If only individual trains from these contracts cross borders, a separate collection is very difficult.

The unit *Train km* does not give a true valuation of the strength of international traffic, because it does not differentiate between the train km run on national territory from the train km abroad. Furthermore, because only individual trains of certain PSO contracts do cross borders, it makes more sense to collect both parameters: *Number of Trains* and *Train-km*.

8. Question 6.2. Access to rolling stock in the context of PSO services

1. IRG-Rail suggests that the name of question 6.2 should be changed to “PSO contracts awarded during the reporting period” in order to better reflect the character of the question which concerns more than just access to rolling stock. In TRAMOS the name is already changed and IRG-Rail proposes to use it in the Regulation.

- “Please provide the following information relating to each PSO contract awarded during the reporting period”:

1. IRG-Rail would like to point out that TRAMOS requests train-km actually travelled, so there is inconsistency as only expected train-km can be provided for contracts awarded during the reporting period. Train-km actually travelled could only be reported if the question was about PSO contracts in force during the reporting period. IRG-Rail suggests to collect total train-km covered by the PSO contract when contracted rather than actual numbers.

9. Question 10.1. Employees in the rail sector by gender and age group

- “Total (full-time equivalents)”

1. In some Member States there are many temporary civil law contracts instead of usual labour code contracts. IRG-Rail suggests to precise if all work contracts should be included and how temporary contracts should be counted in terms of full-time equivalents. It should also be clarified whether apprentices and trainees should be counted into full-time equivalents.

- “Total staff of other infrastructure managers”:

1. IRG-Rail considers this question as problematic. There are many infrastructure managers in some countries, but most of them have limited tracks that are used only for their own use. For example, several major industries are infrastructure managers, but of course, most of their staff do not work with anything related to the infrastructure.

IRG-Rail would welcome a definition that states that only infrastructure with commercial traffic should be reported.

- “Staff of other companies providing services related to rail transport”(*):

1. IRG-Rail considers that it is very difficult to collect these data as RBs have little access to these companies and suggests removing this question or at least supports the optional status of this question.

10. Question 11.1. Ownership and management of main service facilities

1. IRG-Rail suggests that definitions of owners and operators should be provided.
2. IRG-Rail considers that it is very difficult to collect data for this question, e.g. identifying all companies which may own or have access to such facilities can be complex. IRG-Rail suggests considering simplifying the reporting in a way which may ease data collection burden, but still provide valuable information about the service facilities market.
3. IRG-Rail would consider it useful if the Commission could provide guidance on how multi-use facilities should be reported.
4. The definition of refuelling facilities should precise that only licenced fuel stations to which access is provided should be reported. In other words, facilities operated for own purposes of RUs should be excluded.

11. Question 11.2. Number of complaints relating to service facilities

- “Please state the number of complaints made about the access to facilities, the level of charges”:
 1. IRG-Rail suggests that the word “level” could be deleted and that the questionnaire refer to complaints on charging and access issues.
- “Complaints currently being processed by the regulatory body”:
 1. IRG-Rail would like a clarification on what does “currently” mean in the context of reporting for the preceding year.