

IRG-Rail

Position Paper

**on the upcoming draft implementing act on
Rail Market Monitoring,
and on basic principles of market monitoring**

14-15 October 2013

I. Introduction

1. This position paper reflects the view of IRG-Rail on the tasks and roles of regulatory bodies and other entities in the coordination of monitoring the European Rail Market Monitoring Scheme (RMMS).
2. IRG-Rail's objectives with this paper are:
 - To stress the importance of market monitoring as an instrument for developing knowledge of the rail market.
 - To stress that effective data collection is crucial to getting reliable and useful information
 - To stress the importance of clear and consistent definitions
 - To improve the involvement of regulatory bodies in the Rail Market Monitoring Scheme (RMMS)¹.
3. This paper is drafted in light of the preparation of a draft implementing act on the Rail Market Monitoring Scheme (RMMS) as foreseen in Article 15 of Directive 2012/34/EU ('The Recast'). It provides comments on the draft non-paper and the preliminary questionnaire circulated by the European Commission (the Commission) to members of the IRG-Rail Market Monitoring Working Group in April and September. The paper also aims at clarifying the importance of basic principles of market monitoring approaches and highlights the need for coordination between the different market monitoring activities of RMMS, regulatory bodies and individual countries. IRG-Rail stresses the importance for regulatory bodies to be closely involved in the monitoring tasks of the Commission as foreseen in the Recast.

II. Principles of market monitoring

4. IRG-Rail welcomes further measures aimed at improving the collection of data at a European level and increasing the comparability of data. IRG-Rail stresses that comparable and good quality data is essential for a better understanding and further development of the European railway market.

Experiences of IRG-Rail

5. IRG-Rail has experienced the challenges of increasing the quality and comparability of data collected nationally. The necessary first step of IRG-Rail Market Monitoring Working Group has been to bring in line the definitions of indicators as they can differ across individual countries. This has resulted in the compilation of a Common list of Indicators reproduced in the Annex to this paper. Therefore IRG-Rail recommends the inclusion of an additional objective –“*improving the comparability of rail data in Europe*“ in the implementing act.
6. Based on its experience, IRG-Rail considers that it is important to simplify the process by synchronizing the timetable for data collection and using a common template for individual countries to complete.

¹As foreseen in Article 15 of Directive 2012/34/EU.

7. IRG-Rail intends to continue with its market monitoring process in compliance with the provisions set in Articles 56(2) and 56(8) of Directive 2012/34/EU ('the Recast') and will publish a report every year on its activities and findings. A lot of work in market monitoring and data collection on the railway market has already been undertaken. IRG-Rail offers to present and discuss with the Commission important issues that should be considered in relation to indicators and the process of data collection and analysis. The result of the IRG-Rail initial monitoring work is described in the IRG-Rail Annual Market monitoring Report, that can be found at: <http://www.irk-rail.eu/public-documents/2013/>

Regulatory bodies' role in RMMS

8. As both regulatory bodies and the Commission carry out market monitoring functions, we suggest that regulatory bodies are invited to the RMMS meetings in their own right in order to optimize monitoring activities. Only in this way we can ensure the independence of regulatory bodies in the area of market monitoring. Moreover, data collected by the Commission under the implementing act should be shared with regulatory bodies in order to ensure consistency in approaches.

Detailed definitions

9. We strongly believe that consistent and common definitions, with clear explanations, are essential for the success of data collection and analysis, as well as for comparability. Data comparisons will lead to useful results only if there is a common understanding of the data to be collected. IRG-Rail would like to highlight that definitions of the same indicators differ between Eurostat and RMMS, which leads to confusion. Ideally, Eurostat should use the RMMS definitions as these are more specific to the objective of monitoring the railway market. IRG-Rail supports the intention of the Commission to update the Glossary of the Questionnaire.

Focus on core indicators

10. In order to ensure effective and meaningful data collection, the purpose of each indicator and relevant data request should be transparent. In addition, it is also critical that data requests remain appropriate, reasonable and proportionate, acknowledging the burden on respondents to acquire the necessary information. Long and complicated questionnaires are discouraging and are likely to result in low or poor response rates. IRG-Rail recommends that the Commission focuses on a defined set of core indicators.

Process

11. IRG-Rail stresses the importance for the implementing act to set out a clear procedure for the delivery of data (definitions, deadlines, etc.), including the frequency of data submissions and rounds of comments. It should also be made clear who should deliver what kind of data. Furthermore in setting timescales for data delivery, the Commission should consider the (chronological) availability of data, e.g. companies usually compile their annual report during the spring. IRG-Rail supports the submission date of the Commission of 30 September of each year (for data of the previous year). It is also necessary to take into account the time required for data collection and validation. IRG-Rail strongly supports the identification and the development of common indicators for all EU Member States to increase the comparability of data (in terms of definition, methodology and measurement).

National surveys and need for parallel data requests

12. Many regulatory bodies perform their own national market surveys in accordance with their general market monitoring duties. In fact, in order to carry out their regulatory functions properly, regulatory bodies usually require a significant amount of information, thus making market monitoring one of their key activities. It is crucial that national market surveys are designed and adapted to the special requirements and characteristics of national railway markets.
13. Despite the fact that information requests should be limited as far as possible, IRG-Rail stresses that there will always be a need for parallel data requests. Those who ask for data, for example the national statistics authorities and the regulatory bodies have generally different purposes and objectives. As a consequence, they can also apply different definitions. Moreover, in some countries, national law may constrain the transfer of data between various bodies, in particular in the case of confidential information and business secrets. In general, public data should only be used if available in the required format and specification.

III. Indicators in the Commission's April non-paper and preliminary questionnaire

14. At this stage, IRG-Rail's comments only cover the main indicators listed in the Commission's non-paper and preliminary questionnaire discussed at the RMMS meeting in April 2013.

General views

15. Our overarching remark is that many indicators in the non-paper or their classifications do not appear to have a clear definition or purpose. Indicators should either be self-explanatory or be accompanied by clear definitions and explanations, highlighting the scope and the outcome for users or for the sector. Moreover the use of certain expressions and terms does not seem to be consistent across indicators. For example, it is unclear whether the terms regional, local and suburban have the same meaning. If not, the differences should be clearly outlined.
16. Some of the indicators are highly complex and both their scope and outputs for evaluation are unclear. In addition, many indicators require information to be collected from several parties. It should be clarified if the classification of market segments is done by the type of track or by the type of traffic and this classification should be applied consistently.
17. Finally, the data collection could be simplified in some countries with a more heterogeneous railway market by limiting the contribution of infrastructure managers and railway undertakings to those who have a market share larger than 1% of the total train km respectively transport performance (in passenger or ton km).
18. Not all the indicators seem to follow the principles of market monitoring outlined in the section above. IRG-Rail recommends that the Commission reconsiders whether all the proposed indicators are necessary. IRG-Rail makes some suggestions for specific indicators in the subparagraphs as outlined below.

Charges for infrastructure and Rail Related Services

19. IRG-Rail recommends basing the indicator on track charges on the average user charge per train-km paid to the infrastructure manager instead of collecting track charges as stated in the network statement for passenger and freight trains. This method ensures comparability and is more precise as it is based on charges actually paid. It is already used for national reporting by some members of IRG-Rail. This average paid user charge could be subdivided into freight and passenger traffic.
20. It is worth noting that in countries with multiple infrastructure managers and with corresponding charges, it is neither feasible nor accurate to obtain one single charge through the analysis of individual network statements to describe the market adequately. Even in countries with one infrastructure manager, charges can be differentiated to track, peak hours, or include a scarcity charge. IRG-Rail feels that collecting data on charges for specific categories of trains is not a suitable measure. We would recommend limiting the categories to passenger and freight market segments.
21. In addition, IRG-Rail notes that it is often not clear whether the user charge of the infrastructure manager only covers the minimum access package or whether it also includes the use of stations or other services. The revenue from the minimum access package should be separately recorded by the infrastructure manager.
22. IRG-Rail has concerns about the interpretation of the average charge for electricity in EUR per train-km and for different specific train categories. This is imprecise as energy consumption depends strongly on the topography of the track, the used vehicles and traffic operations (e.g. the number of stops). Therefore IRG-Rail proposes to collect data on the total revenues collected for electricity as well as for diesel supply and the total consumption. In this way the average revenue per kWh respectively per liter Diesel can be computed which should give sufficient information on charges for electricity. We are also doubtful that such an indicator will provide comparable results between the countries that are monitored. The data that may be obtained (especially if calculated for different train categories) is likely to be based on estimates and therefore may not be robust or reliable. Further, the term "normal speed"², needs to be defined or explained in more detail.
23. We do not support the proposed indicators used for 'average station charges' and 'freight terminal service charges' that are calculated in EUR per train-km. We question this approach as there does not seem to be any direct relation to train-km. IRG-Rail recommends using an indicator based on the calculation of 'average station charges' per stop and average 'freight terminal service charges' per terminal. Maintenance facilities and other technical facilities do not necessarily have access charges but tend to charge for the type of services that are offered. IRG-Rail Market Monitoring Working Group believes that it would be difficult to collect and compare data on these indicators. It is also important to note that many rail related facilities are commercial entities and therefore are not regulated in some countries. Further comments can be found in the paragraphs covering Rail Related Services below.

² Paragraph 4.1 of the non-paper

Regional/ suburban

24. IRG-Rail acknowledges that the expression regional/suburban (sometimes the term local is also used) is difficult to harmonize and comparisons between Member States are likely to be difficult due to the different sizes, demography and structure of the rail networks. IRG-Rail recommends that the Commission compiles an inventory of existing interpretations of 'regional' amongst Member States. This would be a starting point for further comparability of this indicator.

Quality of rail transport services

25. IRG-Rail strongly supports the inclusion of an indicator measuring punctuality as this is a key measure of the quality of rail transport services. In most Member States punctuality is measured as a proportion of (passenger and freight) trains having a delay of more than a specified limit (e.g. five minutes). To guarantee a certain level of comparability between countries (and between railway undertakings), it is necessary to agree on common specific delay limits. Comparability can only be achieved if every railway undertaking in every country monitored applies the same limits to their delay measurement process. The method for measuring (ideally at all stops) also needs to be transparent. Information reported should specify the level of aggregation at which punctuality is reported, preferably as an average of all trains in a Member State.
26. Regarding the quality indicator "number of days to handle complaints", the term "to handle" needs to be further specified. For IRG-Rail it is unclear whether "to handle" means the decision-taking by the operator, or whether it means that the complaint has been completely finalized, the two options being very different in the eyes of the passenger.
27. IRG-Rail also recommends that, in the implementing act, the Commission limits the number of railway undertakings covered by quality indicators. This could be done by introducing some market share thresholds. In Member States where there is a large variety of railway undertakings, data collection is more complex. Furthermore, comparing data between countries could be complicated even when using average values due to the variation in the types of services that are offered within each country. It also has to be considered that the higher the number of railway undertakings, the more likely it is that some individual railway undertakings' data are lost within an average, meaning that potentially important data or trends are not recognized.
28. A better insight in the quality of the service may be obtained if the total number of minutes of delay is recorded and set in relation to a reference value, preferably delays per train-km. A specified limit for delays gives only restricted information on passenger satisfaction, for example a five minute delay is valued differently than a two hour delay.

Rail Related Services

29. According to IRG-Rail, the amount of data requested for Rail Related Services does not seem to be proportionate. We would strongly recommend that the Commission should focus on the most important services like stations, freight terminals, shunting

yards and maintenance facilities³. Definitions for such facilities should be provided as necessary. We would therefore suggest deleting questions referring to terms like “technical facilities” or “other facilities”. In any case, should they be retained, exact definitions and explanations would be required. The degree of comparability of such collective positions between countries is highly questionable.

30. In addition, questions relating to the access to Rail Related Services appear to be very complex and require a significant degree of differentiation in order to ensure a correct answer. Particularly in countries with a great variety of companies providing Rail Related Services this would result in a very long and extended list. Many companies provide a wide range of Rail Related Services, this would necessarily lead to the differentiation between each of these services, in particular in terms of operational profit/loss and assets/liabilities.
31. With respect to stations, IRG-Rail believes that a classification by a specific range of passengers per day is not used or at least not used in a consistent way by station operators across Europe. In order to determine whether stations fall within a specific category, it could be necessary to combine different data from both infrastructure managers and railway undertakings. This could lead to a complex analysis and could require a huge coordination. We would question the value of such an approach in light of the likely outcome.

International traffic

32. IRG-Rail would support the collection and harmonization of data on international traffic flows. At the moment it is unclear how “international traffic” will be defined and more clarification is needed.

Capacity allocation

33. In general IRG-Rail welcomes indicators on capacity allocation. Nevertheless IRG-Rail expects potential problems by comparing the data as the term ‘congested’ is interpreted differently amongst infrastructure managers. IRG-Rail recommends solving such different interpretations first. In order to evaluate the capacity of existing railway infrastructure, IRG-Rail believes that it is necessary to consider not only kilometers of tracks but also important traffic junctions (not directly measured in km) that are declared congested. We also note that a classification of congested infrastructure in passenger transport, high speed lines and freight is difficult or impossible in the case of mixed operations on the network. There is also no legal basis to declare different kinds of infrastructure for Rail Related Services as congested. Therefore, the criteria for reporting on congestion are questionable.
34. Regarding the indicators for path allocation, it is essential to use consistent definitions of service priorities and terms like ‘RailNet deadline’ should be explained to ensure proper differentiation between late path allocations and ad hoc allocations.
35. Beyond, IRG-Rail has some concerns about the questions regarding path allocation and handling of requests for railway infrastructure and Rail Related Services which are too detailed and will certainly result in complex and resource intensive data

³Although maintenance facilities are an important RRS it has to be considered that charges for maintenance facilities are difficult to collect and to compare, see paragraph 21.

collection and analysis. IRG-Rail recommends reducing the categories of traffic to regional, long distance and freight traffic and reducing the categories of handling requests to requested paths, accepted paths, disputed paths and used paths.

Development of fares

36. It is not clear what kind of insights the EU Commission wants to acquire with the described procedure. IRG-Rail has some concerns about the proposed approach that involves monitoring only a few defined types of fares based on a list of potentially interesting lines. We fear that this would end up comparing pricing structures between companies that are not directly comparable (for instance in Germany between DB and HKX). In general we would recommend a method based on the evaluation of revenues (e.g. revenue/pkm) which seems to be more sensible. In addition, IRG-Rail points out that in some Member States, national statistics authorities use and evaluate fares on more lines but not in order to determine the development of individual fares but to determine the general inflation rate.

Rail transport services covered by public service contracts

37. The existing indicator measuring the percentage of train-kilometers and passenger-kilometers travelled under a public service contract seems to be sufficient. This indicator is particularly helpful for regulatory bodies to get a better understanding of the national market. Should data on public service obligations have to be evaluated in more detail in respect to specific segments (e.g. long-distance, high speed, regional and suburban as proposed), it is important to ensure consistent definitions of these segments (see also comments on Regional/Suburban).

Degree of market opening

38. Information on new market entrants is already (at least partially) collected by some regulatory bodies. In some countries, this information is subject to national confidentiality arrangements on business secrets and therefore it may be difficult to share this data without any legal basis. The ownership and the availability of rolling stock are of interest for the market and for regulatory bodies. However, IRG-Rail recommends that the Commission examines what data can be obtained from the rolling stock register of European Rail Agency.

Investments in infrastructure

39. IRG-Rail supports the Commission's approach on data in respect of infrastructure expenditure with information requirements broken down into "maintenance", "renewals" and "enhancements". We would however recommend that these terms are defined or explained to ensure proper comparisons. In general, the definition should be limited to the minimum access package and more specifically, the definition of "maintenance" should exclude operational costs. Furthermore, IRG-Rail asks the Commission to reconsider the term "investments in infrastructure"; this is confusing because "maintenance" means usually expenditure and not investment. It would also be useful to have a definition of what kind of expenditure is monitored. IRG-Rail suggests that the companies' own capital resources and also public subsidies need to be monitored. It should be made clear whether the expenditures refer to investments made by operators of tracks or by operators of facilities for Rail Related Services.

Annex

Independent Regulators' Group – Rail IRG-Rail

Updated common list of indicators

Considerations

The members of IRG-Rail are of the opinion that intensive cooperation between the national independent Rail regulatory bodies (RBs) is important in order to promote sustainable and effective competition in the railway sector and to contribute to the development of a European internal rail market. The aim of IRG-Rail is to foster a consistent approach to the regulatory framework for railways in Europe and to develop regulatory best practice. For this purpose, IRG-Rail has established a working group on market monitoring.

Rail market monitoring is an important instrument for gathering market information, setting directions 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.

Between regulatory bodies national approaches to market monitoring differ which makes comparisons between national monitor reports difficult. Therefore the working group specifically aims at increasing the comparability of national rail monitors.

The members of the working group have shared their experiences and jointly developed a list of qualitative and quantitative indicators. The selected indicators have high informative value and are most common to the members of the working group. The list is a starting point and upon evaluation more indicators may be added.

Members of IRG-Rail are advised to incorporate this list of common indicators into their national monitor. Members taking part in the working group intend to adopt this list of common indicators for monitoring activities carried out in 2012. The intention is to publish a common report comparing national results. Other European regulatory bodies are invited to adopt this list.

In accordance with Articles 6 and 8 of the Memorandum of Understanding, the plenary assembly of IRG—Rail, has adopted the following common list of indicators.

A. Definitions

The following definitions are used:

- a) **Network Statement** as defined by Article 3(26) of Directive 2012/34/EU.
- b) **Net ton** is the weight of the load (including for example the container weight) where ton is 1000 kilograms.
- c) **Gross ton** is the weight of the train, including the weight of the load, the weight of the locomotive and the tare weight of the wagons.
- d) **Revenue collected by the infrastructure manager** refers to revenue for all track access charges for the minimum access package as specified in Article 13(1) of Directive 2012/34/EU excluding electricity.
- e) **Incumbent** is the (former) state-controlled railway company, including all related companies.
- f) **Other companies** are all companies not acting as an RU or IM.

- g) **Training facilities:** are all facilities where commonly rail-related education is conducted.
- h) **Passenger stations:** are facilities where passengers can embark and disembark a passenger train;
- i) **Freight terminals:** facilities in rail freight transport which are used for the loading and unloading (including loading ramps and roads) of freight trains.
- j) **Marshalling yards and train formation facilities:** facilities for the formation, sorting, rearranging, solving and treatment of trains.
- k) **Storage sidings:** railroad tracks that serve only to accommodate rail rolling stock.
- l) **Maintenance facilities:** are facilities where rolling stock is maintained. Maintenance is the set of activities designed to keep rolling stock in operation.
- m) **Refueling facilities:** station for refueling for locomotives and multiple units.
- n) **Train pre-heating facilities:** facilities for pre-heating and / or air-conditioning of passenger trains.
- o) **Supply of electricity:** facilities and infrastructure to supply trains in operation with traction current.
- p) **Supply of shunting services:** Service provider for the process of sorting items of rolling stock into complete train sets, or the reverse. This includes the provision of locomotives and / or shunting staff.
- q) **Technical inspection of rolling stock:** Activities aimed at checking the actual condition of the rolling stock.
- r) **Ticket sales at stations and other distribution channels:** Distribution channels for train tickets like counter-sale, onboard-sale, online-sale, sale via travel agency etc.
- s) **International passenger traffic:** passenger traffic where the train crosses at least one border and where the principal purpose of the traffic is to carry passengers between stations located in different Member States. This definition reflects the definition of 'international passenger service' as specified in Article 3(5) of Directive 2012/34/EU.
- t) **International freight traffic:** traffic where the train crosses at least one border. This definition reflects the definition of 'international freight service' as specified in Article 3(4) of Directive 2012/34/EU.

B. Indicators

The national market monitor includes the following quantitative indicators: consistent

a) (Electrified) route length

Route length refers to the route length of all routes available for freight and passenger traffic on the network of the infrastructure manager, as specified by the infrastructure manager in the Network Statement, as opposed to track length. The monitor differentiates between the incumbent infrastructure manager and other infrastructure managers. In addition, the monitor differentiates between electrified and non-electrified route length. The unit of measurement for route length is kilometer.

b) Rail traffic movements

Rail traffic movements refer to the actual train kilometers for freight and passenger trains per year. Additionally, the monitor differentiates between national and international passenger and freight train movements on their own territory.

c) Rail traffic usage

The monitor includes annual gross and/or net ton kilometers for freight trains and passenger kilometers for passenger trains. Additionally, the monitor differentiates between national and international passenger and freight volumes. The monitor will only report on passenger/freight usage on their own territory.

d) User charge

The average revenue collected per year in Euros, per:

- 1) train kilometer for passenger trains;

- 2) passenger kilometer for passenger trains. Optionally, the monitor differentiates between regional and long distance passenger trains;
- 3) train kilometer for freight trains, and
- 4) gross and/or net ton kilometer for freight trains.

With regard to revenue, the monitor may differentiate between revenue collected from track and station charges. If the national currency is not the Euro, the exchange rate for the reported year has to be specified in the report.

e) Number of active railway undertakings

The number of active railway undertakings means any public or private undertakings which provide services for the transport of goods and/or passengers by rail network(s), as these networks are defined in Directive 2012/34/EU. The number differentiates between passenger and freight railway undertakings.

Excluded from the scope are railway undertakings:

- whose only business is to provide services for the transport of passengers by metro, tram and/or light rail,
- which operate entirely or mainly within industrial and similar installations, including harbors,
- which mainly provide local tourist services such as preserved historical steam railways.

The definition 'active railway undertakings' used by the working group reflects the definition of railway undertakings of Eurostat (Regulation 91/2003) whilst adding the requirement of being active on the network(s).

f) Companies without any alliance to an incumbent

The monitor specifies the number of active railway undertakings operating in one country and having no ownership relation with an incumbent in other countries.

g) Market shares

The monitor specifies the market share of freight and passenger railway undertakings in total train-kilometers. It is recommended that the monitor specifies market share based on:

- gross and/or net ton kilometer and passenger kilometers; and/or
- share of infrastructure managers' revenue collected through track access charges; and/or
- share of operators' revenues for freight and passenger markets. Revenues from passenger operations should include potential compensation payments.

In addition, the monitor must specify between incumbent and non-incumbent railway undertakings. Optionally, the monitor lists those companies with a market share larger than 1%, as in the EU rail market monitoring survey (RMMS).

h) Revenues of railway undertakings

The monitor optionally specifies aggregated revenues of train operations in Euros. The monitor could specify aggregated revenues for freight and passenger operators. Further the monitor could split revenues of passenger operators into the following categories:

- revenues from fares and from public compensation payments; and/or
- long distance and regional passenger operators.

Revenues should be limited to the specific country under consideration and exclude revenues of foreign operations.

i) Rail related services

The monitor reports on main services (training facilities, passenger station, freight terminals, marshalling yards, storage sidings, maintenance facilities), furthermore on secondary and additional services (train pre-heating services, supply of electricity) as well as on ancillary services (technical inspection of rolling stock, ticket sales at stations and other distribution channels).

The monitor specifies the following information:

- Main services: a short description of the main operator, the number of operators and the number of facilities, specified to either incumbent, other RU, IM or other company. Further the monitor provides a short description of the developments as well as problems encountered for this service.
- Secondary/ additional services and ancillary services: a short description of the market and market developments as well as of problems encountered for this service.
This information should be primarily used to gain more detailed knowledge of the different conditions in national markets for these services in order to create a basis for the development of suitable, defining common questions and indicators could be a next step.

Guidelines on qualitative survey questions

The national market monitor may also report on the results of a common qualitative survey to be distributed all railway undertakings. The qualitative survey questions are recommended for regulatory bodies which want to investigate the satisfaction of railway undertakings in the rail market.

The qualitative survey is intended to give market participants the opportunity to report their opinion of the current situation, developments and problems in national markets and to provide impetus for potential improvements. The market participants may give their market evaluation based on the following structured questions:

How do the following factors influence your business?

Please evaluate on a scale from 1 to 5.

1. Access to rail infrastructure – line infrastructure / train path allocation
2. Access to rail infrastructure – service facilities
3. Pricing structure of infrastructure access charges
4. Level of infrastructure access charges – freight
5. Level of infrastructure access charges – passenger
6. Certification of rolling stock
7. Licensing of railway undertaking
8. Safety certification of railway undertaking
9. Quality of existing rail infrastructure
10. Other ... (please specify)

1 = large negative impact

2 = negative impact

3 = neutral / no impact

4 = positive impact

5 = large positive impact