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Independent Regulators' Group - Rail

IRG-Rail

Annual Report 2018

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Foreword by the IRG-Rail Chair for 2018

As Chair for 2018, I am pleased to present the Annual IRG-Rail Report covering the activities carried out by the Independent Regulators' Group-Rail.

Throughout the year, I closely cooperated with João Fernando Carvalho, President of AMT and Vice-chair of our Network for 2018. Together we maintained close contact with Anne-Yvrande Billon, Vice-president of ARAFER and Chair of IRG-Rail in 2017. Let me express my warm thanks for their collaboration and support.

Together, too, we were pleased to report to the Plenary Assembly that Serge Drugmand, Director of the Regulatory Body for Railway Transport and for Brussels Airport, had agreed to advance his candidature for IRG-Rail 2019 Vice-chairmanship - and 2020 Chairmanship, that was endorsed by the Plenary Assembly in November.

In the year under review, IRG-Rail pursued cooperation, information exchange and sharing of best practices as envisaged in its mission and objectives, addressed current and emerging rail regulatory issues and set useful shared benchmarks for the application of the European regulatory framework.

The Group's activities were implemented in line with the strategic challenges identified in IRG-Rail Strategy Document 2017-2018 with a view to the liberalisation of domestic passenger markets, the regulation of cross-border issues and the development of new regulatory tools and methods to effectively address market developments.

One of the main achievements in 2018 was the adoption of a Memorandum of Cooperation between IRG-Rail member Regulatory Bodies to complement the founding Memorandum of Understanding, in particular in light of article 2 thereof. The Memorandum also aimed at meeting the new cooperation requirements of the Fourth Railway Package pursuant to article 57 of Directive 2012/34/EU, that defined structures and rules for cooperation between Regulatory Bodies and with the Commission at

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European level, to increase coherence in decision-making across the EU.

This advanced cooperation arrangement within IRG-Rail further calls for a reflection on the future evolution of the Network of Rail Regulatory Bodies, consistently with the transport market developments of the Single European Rail Area and the shift towards mobility solutions that are consumed as a service and include the integration of different transport modes.

Furthermore, in accordance with the third challenge identified in the Strategy Document, focusing on digital platforms and on the emergence of new multimodal markets players, as well as in the context of the 'year of multimodality' that was launched by the EU Commission in 2018, another significant accomplishment was the activity started on regulatory issues of multimodality in transport. A dedicated Task Force, that was participated on a voluntary, opt-in basis, was set up with the aim of preliminarily addressing issues which are most relevant for regulators in this context, trying to identify a first set of regulatory tools critical for several modes of transport and the areas (particularly concerning land transport) in which further work could be undertaken.

Twelve member Regulatory Bodies agreed to participate in the Task Force. The work unfolded based on a preliminary paper outlining some of the regulatory issues related to multimodality. The document, that was first shared among the members of the Task Force, was illustrated to the IRG-Rail Plenary Assembly in May. It attests that multimodality is a priority issue of common interest to be closely followed up in the near future.

As in past years, IRG-Rail continued to provide the EU Commission with regulatory inputs on the relevant subjects under discussion concerning, in particular, the Economic Equilibrium Test, the revision of the Member States' obligations on EU rail market monitoring, a template on service facilities descriptions, common principles on granting exemptions from certain obligations imposed on service facilities operators, to mention but a few.

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Lastly, but certainly not least, the IRG-Rail Annual Market Monitoring Report, the sixth since the setting up of IRG-Rail, was approved and published on the Network's website. It is increasingly regarded by the relevant stakeholders, including the EU Commission, as an appreciated and valuable benchmark for the overview of the economic conditions and market developments in the railway sector.

2018 has marked the seventh anniversary since the establishment of IRG-Rail. We may be proud of the results achieved so far, that testify to IRG-Rail's responsiveness and commitment in effectively addressing current and emerging rail regulatory issues.

Andrea Camanzi - IRG-Rail Chair 2018, President of the Italian Transport Regulation Authority (ART)

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A. Introduction

I. Goals of IRG-Rail

1. The „Independent Regulators’ Group -Rail”, IRG-Rail, was established on 9 June 2011 by the regulators of 15 European countries¹ with the aim of enhancing and promoting cooperation among national independent rail Regulatory Bodies. The group has grown in number and currently consists of Regulatory Bodies from 31 European countries.
2. The overall purpose of IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railway market in Europe, by acting as a platform for cooperation, sharing of best practice on regulatory issues and promotion of a consistent application of the European regulatory framework.
3. IRG-Rail has already become an important player that is recognized by key stakeholders, including European institutions and sector organizations. Through the publication of position papers, inputs to legislative proposals and harmonized regulatory principles and practices, IRG-Rail continues to prove its competence 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 European rail Regulatory Bodies regarding the most important emerging issues in the EU rail market.
5. On the basis of an open and transparent dialogue with all relevant parties, notably the European Commission, the European Parliament and the main stakeholders, IRG-

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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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.

II. IRG-Rail Working Groups and Sub-Groups

1. The Working Groups and Sub-Groups are the forum for developing, debating and encouraging Members' position and views on regulatory issues.
2. They report and submit for approval to the Plenary Assembly draft documents, e.g. position papers or discussion papers, reports or guidelines, concerning the topics falling within their remit. Once approved, the documents are published on IRG- Rail's website, or in the Members' Area section, as the case may be.
3. The table below summarises the scope of activity of IRG-Rail Working Groups and Sub-Groups:

Working Groups & Sub-groups	Scope
Access Working Group	covering access-to-rail-network issues including paths allocation processes, barriers to market entry, interoperability.
Access to services facilities Sub-Group	covering access-to-service-facilities issues and ensuring consistent application of EU legislation.
Charges Working Group	dealing with charging matters in relation with railway infrastructure and rail-related services.
Charges for service facilities Sub-Group	dealing with service facilities charging and identifying common practices in terms of service facilities' charging.
Emerging Legislative Proposals Working Group	dealing with issues stemming from new legislative tools or initiatives proposed by the European Commission.

Market Monitoring Working Group	collecting and analyzing data on transport and rail sectors to draft an annual Market Monitoring Report.
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4. A Strategy Committee, that was set up in accordance with paragraph 4 of IRG-Rail Working Arrangements in 2016 and consists of representatives of the member Regulatory Bodies, including those of the current, previous and next chair of IRG-Rail, is entrusted with outlining a multi-year strategy of IRG-Rail, identifying key strategic issues that are likely to impact on the role or activities of the Regulatory Bodies or on the rail sector, assisting in the preparation of the annual Working Programme and, if necessary, proposing amendments thereto.

Following up on the first two meetings organised by ARAFER in January and April 2017, the Strategy Committee met in Rome in January 2018. Within its framework the decision was taken to establish a Task Force on “Multimodality in transport”, under the terms of the 2017-2020 Strategy Document, with the participation of willing partners (see below).

III. Working Programme

The working programme is prepared each year by the Chairperson and Vice-chairperson of IRG-Rail with the assistance of the Strategy Committee. Should the need arise during the year, the Strategy Committee and IRG-Rail Members may request to amend the working programme and the relevant procedure shall be initiated by the Strategy Committee in accordance with Article 4 of the Working Arrangements.

The deliverables assigned to each Working Group and Sub-group on the basis of the 2018 Working Programme were identified as follows:

1. the Working Group Access would focus on monitoring cooperation between infrastructure managers, based on the member Regulatory Bodies’ experiences regarding cross-border traffic for freight and passenger trains, and on the capacity allocation process, following closely the implementation of the new delegated act. Besides further developing the cooperation with ERA concerning technical and/or

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market barriers, the Working Group was entrusted with investigating the issue of rolling stock as a potential barrier to market access for railway undertakings. Regarding rail freight corridors, it was assigned with the task of collecting data on KPIs and provide a list thereof.

2. The deliverables of the Sub-group Access to Service Facilities consisted in developing common decision-making principles for the application of criteria for exemptions, pursuant to article 2 (2) of Commission's Implementing Act on Service facilities, and cooperating with infrastructure managers, service facilities operators and railway undertakings in the development of the template envisaged in the above Implementing Act. It was also tasked with finding a common approach concerning the time limits set by the member Regulatory Bodies to answer the requests for access to and supply of services facilities.
3. The Working Group Charges was entrusted with further developing an understanding of the charging principles across the European rail sector, in particular, by discussing regulatory issues concerning the examination of cost components and composition of infrastructure charges, as well as the assessment of direct costs and mark-ups, and by seeking to analyse the impact of the opening of the domestic passenger market on railway charges.
4. The activities of the Sub-group Charges for Service Facilities encompassed the development of a common understanding of EU provisions on charging principles for service facilities and of a common position on individual notions based on the experience of the member Regulatory Bodies.
5. The Working Group Emerging Legislative Proposals was asked to engage in the implementation and application of the Fourth Railway Package. In cooperation with the Working Groups Access, Charges and Market Monitoring, it was tasked with providing inputs to this process based on evidence arising from regulatory practice.
6. The main assignment of the Working Group Market Monitoring was the drafting of the

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annual market monitoring report, based on data collected by national Regulatory Bodies according to an agreed set of guidelines in line with its mandate, i.e. providing annual overviews of the economic conditions and market developments in the railway sector. The purpose of the exercise is to show the development of the European railway market and its competitiveness compared with previous years.

Part B of the Annual Report illustrates in greater detail the activities carried out in 2018 by the Working Groups.

In the Plenary Assembly of November 2018, IRG-Rail adopted the Working Programme for 2019 consistently reflecting the objectives of the 2017-2020 Strategy Document.

IV. Task Force on Multimodality in Transport

In the context of the “year of multimodality” launched in 2018 by the European Commissioner for Transport Violeta Bulç, and in line with the objectives identified in the Strategy Document, in 2018 IRG-Rail members continued to exchange views on the topic, following up on the workshop organised in 2017 under ARAFER’s Chairmanship.

To further explore issues related to multimodality in transport, a Task Force was set up on 17 May 2018 in Turin, on a voluntary, opt-in basis and was participated by twelve member Regulatory Bodies. The Task Force developed a preliminary paper to identify the main issues to be further investigated and an annex including the functions and powers of the participating Regulatory Bodies with respect to rail and other areas of transport. The paper was first outlined to IRG-Rail members at the Plenary Assembly in May. The final text and main conclusions of the exercise were then illustrated to the Plenary Assembly that was held in November. The Plenary was further informed that the Task Force had agreed to follow up with exploring the issue of multimodality in 2019 in the form of case studies.

B. Overview of the Activities under 2018 Working Programme

The 2018 Working Programme aimed at underlining the relevance and need for increased

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cooperation among rail Regulatory Bodies to achieve effective and sustainable competition in the railway market.

Accordingly, the Network continued to closely follow the activities of the EU Commission on implementing and delegated acts as well as to maintain a dialogue on an institutional basis with infrastructure managers, railway undertakings and relevant stakeholders on topics of common interest: supply of capacity, access to rail services, cross-border traffic and technical barriers to such access, to mention only some.

I. Working Group Access

Drawing on the serious consequences of the Rastatt case, the Working Group carried on the monitoring of the infrastructure managers' activities focusing on the issues of temporary capacity restrictions and contingency management.

The monitoring activity included the participation in the experimental phase of three TTR pilots, whereby new products and processes were tested in the context of capacity allocation.

In cooperation with ERA, the Working Group addressed the issue of technical safety rules, in particular whether they may constitute barriers to access.

As for the development of rail freight corridors, the performance data available for 2017, concerning, *inter alia*, commercial speed, percentage of capacity allocated to corridors and number of PCS dossiers that were cancelled and/or modified before timetable changes, were collected and analysed.

II. Sub-group Access to Service Facilities

The Sub-group Access to Service Facilities developed a document on common-decision making principles that should be applied by national Regulatory Bodies when assessing the requests for exemptions under article 2 (2) of Commission Implementing Regulation (EU) 2017/2177. The document was translated in the languages of the RBs' member

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countries and published on IRG-Rail website.

To ensure an adequate implementation of the EU Regulation, the Sub-group also followed the work underway on the drafting of a common template, as provided for by article 4 thereof, that includes a description of the facilities by service facility operators and of any useful information for their identification. Amendments were proposed to the template elaborated by RNE to try and solve the criticalities arising from discussions with stakeholders.

Concerning the implementation of Article 13(4) of Directive 2012/34/EU, the Sub-group conducted a survey on the time limits set by Regulatory Bodies to answer the railway undertakings' requests for access to and supply of services in a service facility.

III. Working Group Charges

Within the context of the activities to ensure non-discriminatory capacity allocation and levying of charges for use of infrastructure, proper application of charging principles and full compliance with accounting separation rules, the Working Group carried on the work on the examination of cost components and the composition of infrastructure charges. The overview of charging principles, first published in October 2012, was updated to take account of the latest changes in national legislation and included a comprehensive analysis of the criteria for direct cost calculation and of the market segments.

Further, an analysis was started to provide a comprehensive overview of the minimum access package (MAP) financing, focusing both on total and direct costs, and on revenues. The Working Group discussed how to further differentiate the cost data of the MAP provided by the main IM of IRG-Rail member states, focusing on MAP service provided, functional cost view or nature of expense. The outcome of the analysis highlighted that further work is needed to improve the quality of data so as to provide a meaningful comparison across countries and be able to clarify per-country differentiations.

IV. Sub-group Charges for Service Facilities

Acknowledging that access to and charges for service facilities are equally important for the railway market, the Sub-group focused on the charging principle under Article 31 (7) of Directive 2012/34/EU and provided relevant experiences and views of the Regulatory Bodies.

Also analysed was the issue of storage sidings as essential service facilities for the use of train paths. The Sub-group compared the existing storage charging systems among the member Regulatory Bodies to highlight differences and/or similarities for identifying common practices.

V. Working Group Emerging Legislative Proposals

With a view to implementing the changes introduced into the Recast Directive with the adoption of Directive (EU) 2016/2370, the Working Group focused on the new cooperation requirements among Regulatory Bodies addressing the need for a consistent approach by IRG-Rail members to the EU regulatory framework for railways, as provided for by new paragraphs (3a) and (8) of Article 57 of the Recast Directive.

For this purpose, a Memorandum of Cooperation was concluded among the member Regulatory Bodies that supplements the commitment to cooperation set out in the IRG-Rail Memorandum of Understanding. The Memorandum of Cooperation provides for procedures for information exchange and mutual assistance in handling complaints and includes a detailed cooperation mechanism in the cases involving the decisions of at least two Regulatory Bodies, that shall be coordinated when settling cross-border issues concerning international services. The mechanism also provides for the involvement of the stakeholders concerned and the collaboration among Regulatory Bodies. The Memorandum includes provisions on data confidentiality, including with reference to those provided by third parties, that are subject to EU regulations and relevant domestic legislation.

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Further, in accordance with the provisions of new Article 56 (9), the Working Group reviewed the new responsibilities assigned to the Regulatory Bodies, i.e. monitoring the competitive situation in the rail service markets and deciding, on their own initiative, on measures to correct discrimination against applicants, market distortion and undesirable developments in these markets, as well as the relevant experience of rail regulators.

Followed, and contributed to, were also the EU Commission's activities for the adoption of implementing acts on procedures and criteria to be followed in the application of the provisions concerning national passenger rail services (pursuant to Article 11 (4) of the consolidated Recast) and the limitations to the right of access on routes covered by one or more public service contracts.

VI. Working Group Market Monitoring

As in previous years, the Working Group attended to the drafting of the Annual Market Monitoring Report covering data for 2016 and previous years, that was published at the beginning of 2018.

Work on the Seventh Annual Market Monitoring Report was started, too, in order to expand on the analysis started in the Fifth Annual Report, concerning the degree and type of competition in the passenger market and the incumbent's strategy to access rail market abroad, both at the EU and international level.

In the context of the market monitoring activity pursuant to article 15 of the Recast Directive, following up on a request by the EU Commission, the Sub-group provided comments on Implementing Regulation (EU) 2015/1100, thereby highlighting both the importance of data quality for the rail market oversight by the Regulatory Bodies and IRG-Rail's availability to support any initiative contributing to enhance data collection.

C. Organisational Issues

I. Representation and Communication

1. IRG-Rail is strongly committed to ensuring that independent rail Regulatory Bodies develop and implement best regulatory practices and is therefore always available to approach non-member regulators with the aim of supporting their participation in the working groups' activities and in IRG-Rail. The increased participation brings added value to the Group and helps fostering the development of a single European railway market.
2. As in previous years, the Chair and Vice-Chair had productive exchanges with main European stakeholders, e.g. ERA, ERFA, UIRR, UNIFE, CER, EPTO and RNE, to present IRG-Rail's views and exchange on the most relevant topics for the European rail market with a view to balancing different interests and fostering a better understanding on crucial issues.
3. IRG-Rail continued to develop close relations with the EU Commission, the EU Agency for Railways (ERA) and the European Network of Rail Regulatory Bodies (ENRRB). In this forum IRG-Rail continues to report on a regular basis on its past and future activities, on topics on which the Group wishes to take a position, and on its outputs.
4. All documents published by IRG-Rail in 2018 are available on the Group's website (see list in Annex I).

II. Information about Elections and Plenary Meetings

1. Elections

1. According to its Memorandum of Understanding, IRG-Rail 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 Vice- Chair

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during the following year and Chair the year after.

2. From January to December 2018, the Group was chaired by Andrea Camanzi, President of the Italian Transport Regulation Authority (ART) and vice-chaired by Joao Carvalho, President of the Portuguese Authority for Mobility and Transport (AMT). At the 2018 November Plenary Meeting in Turin, Serge Drugmand of the Belgian Regulatory Body for Railway Transport and Brussels Airport Operations was appointed as IRG-Rail Vice-Chair for 2019.

2. Plenary Meetings

1. The Plenary Assembly is composed of the Heads of the Regulatory Bodies that are members of IRG-Rail and/or any senior executive designated by the Heads of the member Regulatory Bodies.

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

- take the necessary decisions 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 its progress;
- appoint its Chair and Vice-Chair.

3. In 2018, two Plenary Meetings were hosted by ART in Turin on 17 and 18 May and on 15 and 16 November, respectively.

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Annex I – Published Documents

- IRG-Rail - Sixth Annual Market Monitoring Report
- IRG-Rail - Memorandum of Cooperation
- IRG-Rail (18) 1 - IRG–Rail Annual report 2017
- IRG-Rail (18) 2 - Position Paper on the revision of Reg. 2015/1100
- IRG-Rail (18) 3 - Position Paper regarding a Common template for Service Facility descriptions
- IRG-Rail (18) 4 - Position Paper on Commission public consultation Draft of the Implementing Regulation EET
- IRG-Rail (18) 5 - Overview on findings regarding Implementation and interpretation of Regulatory Bodies' functions and powers of Regulatory Bodies under article 56.9
- IRG-Rail (18) 6 - IRG-Rail Working Programme 2019
- IRG-Rail (18) 7 - Common principles on granting exemptions under Art. 2 (2) of Commission Implementing Regulation EU 2017/2177
- IRG-Rail (18) 8 - Compilation of national definitions for heritage railways
- IRG-Rail (18) 9 - Report on time limits set in Member States for answering requests by railway undertakings for access to, and supply of services in the services facility pursuant to art.13 (4)
- IRG-Rail (18) 10 - Updated review of charging practices for the minimum access package in Europe
- IRG-Rail (18) 11 - European benchmark on railway financing (short version) (available under the Member Area of the website)
- IRG-Rail (18) 12 - Report about international cooperation of Infrastructure Managers on TCRs and CM (available under the Member Area of the website)
- IRG-Rail (18) 13 - Report about allocation process and the 3 Timetable Redesign pilot projects (available under the Member Area of the website)
- IRG-Rail (18) 14 - Report on the outcomes of the KPIs monitoring KPIs (available

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under the Member Area of the website)

- IRG-Rail (18) 15 - Report on the overview of technical barriers (available under the Member Area of the website)
- IRG-Rail (18) 16 - An overview of charges for storage sidings in the IRG-Rail Member States.

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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

(Regulatory Service for Railway Transport and for Brussels Airport Operations)

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 - Úřad pro přístup k dopravní infrastrukture

(Transport Infrastructure Access Authority)

Denmark

Jernbanenævnet

(Danish Railway Regulatory Body)

Estonia

Konkurentsiamet

(Estonian Competition Authority)

Finland

TRAFICOM – Liikenne- ja viestintävirasto

(Finnish Transport and Communication 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

(Regulatory Authority for Rail and Road activities)

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Germany

BNetzA - Bundesnetzagentur
(Federal Network Agency)

Greece

RAS - Ρυθμιστική Αρχή Σιδηροδρόμων
(Regulatory Authority for Railways)

Hungary

NKH - Nemzeti Közlekedési Hatóság
(National Transport Authority)

Ireland

CRR – Commission for Rail Regulation

Italy

ART - Autorità di Regolazione dei Trasporti
(Transport Regulation Authority)

Kosovo

ARH - Autoriteti Rregullativ i Hekurudhave
(Railway Regulatory Authority)

Latvia

VDA - Valsts dzelzceļa administrācija
(State Railway Administration)

Lithuania

RRT – Lietuvos Respublikos ryšių reguliavimo tarnyba
(Communications Regulatory Authority)

Luxembourg

ILR - Institut Luxembourgeois de Régulation
(Luxembourg Institute of Regulation)

Netherlands

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

Norway

SJT - Statens Jernbanetilsyn
(Norwegian Railway Authority)

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Poland

UTK - Urząd Transportu Kolejowego
(Office of Rail Transportation)

Portugal

AMT – Autoridade da Mobilidade e dos Transportes
(Portuguese Authority for Mobility and Transport)

Romania

Romania Consiliul Concurentei
(Railway Supervision Council)

Serbia

Raildir - Direkcija za železnice
(Directorate for Railways)

Slovakia

DU - Dopravný úrad
(Transport Authority)

Slovenia

APEK - Agencija Za Kóumikacijska 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
(National Commission on Markets and Competition)

Sweden

Transportstyrelsen
(Swedish Transport Agency)

Switzerland

SKE - Schiedskommission im Eisenbahnverkehr
(Railways Arbitration Commission)

United Kingdom

ORR - Office of Rail and Road