

Independent Regulators' Group – Rail

IRG-Rail

Working Programme 2020

IRG-Rail is the network of independent rail Regulatory Bodies comprising 31 European countries. The overall aim of IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railways market in Europe. IRG-Rail acts as a platform for cooperation, sharing of best practices on regulatory issues and promotion of a consistent application of the European regulatory framework.

This IRG-Rail paper is published under the responsibility of IRG-Rail. The opinions expressed and arguments employed herein by member Regulatory Bodies do not necessarily reflect the official views of their respective governments.

I. INTRODUCTION

The railway industry quickly became an economic boom throughout the world, moving goods and people on a mass scale. Transportation, especially in the railway sector, is on the cusp of unprecedented change. High-speed travel at levels never seen before, population shifts and simple supply and demand are all changing. Leverage of digital technology that allows collaboration and efficient modelling and environmental considerations will not only transform the tools currently used to build railway infrastructure, but will revolutionize transportation itself. When observing the evolution of European rail regulation, significant work has been carried out since 2011, as reflected in IRG-Rail's opinions and exchanges over recent years.

IRG-Rail has the chance to positively shape the future of rail transport and grasp the opportunity to be involved and outline long-term vision and goals for the railway sector in particular and mobility in general. Also, by examining the challenges and opportunities for rail, IRG-Rail can minimise future uncertainties working in collaboration with the sector's stakeholders.

As with all multilateral cooperation, reaching agreements in an environment with different customs and practices takes time. In some areas, positions amongst IRG-Rail Members vary significantly. In addition, rail regulation continues to evolve, including new competencies for the Regulatory Bodies.

It is obvious that the building of the Single Rail Market is a work in progress. In this framework, cooperation between all rail Regulatory Bodies follows the same route. A single market is a really ambitious goal, and so is achieving a deep cooperation between rail Regulatory Bodies.

IRG-Rail is crucially placed as a main stakeholder in building a strong and effective rail network.

Of course, to improve their performance, Regulatory Bodies can always use tools or concepts coming from other network industries, such as energy or telecommunications. But simultaneously, we have to keep in mind that this cannot be the answer to all issues. In this case, cooperation can shine a new light on new issues.

Over the past years IRG-Rail's cooperation has been based on the activities of different working groups which cover specific issues. In recent meetings, it has been

established that the links between the Working Groups have to be strengthened, in order to give greater coherence to the outcome. The 2020 working programme reflects the commitment of each working group to closer collaboration towards better integrated outputs.

Additionally, in recognition of the importance of multimodality matters in the transportation and mobility sector, IRG-Rail's multimodality task force will continue to collect case studies with the aim of identifying relevant regulatory issues and will update the paper "Multimodality: cases, materials and regulatory issues".

As in previous years, this work programme aims to strengthen and deepen cooperation between Regulatory Bodies.

WORKING PROGRAMME 2020

1. ACCESS WORKING GROUP

The objectives of the Access Working Group are to focus on all aspects of access to railway infrastructure with respect to market barriers, access restrictions, the promotion of competition, the needs of passenger and freight customers and improved rail performance. For 2020 the Access Working Group will focus on three main subjects. In addition, the working group will continue to engage in other aspects of access policy which are of strategic importance for the development of a liberalised and well-regulated market and for international railway traffic across Europe following the implementation of the Fourth EU railway package. This includes the reduction/elimination of technical, operational and regulatory barriers which hinder entry into the market and its competitive development.

Work streams

a) The TTR project and its pilots

Railway stakeholders are working on the project of the Redesign of the International Timetabling Process (TTR), aimed at creating a new process for the allocation of capacity. TTR started in 2015 and aims at becoming operational with the 2025 time table.

For facilitating the development and testing of the TTR project, three pilot projects are currently being carried out on rail freight corridors:

- RFC2 Rotterdam - Antwerp;
- RFC3 Munich - Verona;
- RFC4 Mannheim - Miranda de Ebro.

A new pilot project for TT 2021 will start soon with regard to parts of the main lines of the Austrian network (OBB Infra). In 2019 the Access Working Group started to engage with RNE and participated in a specific ENRRB's meeting with the aim to exchange views on the TTR project and its pilots and provide advice from the regulatory perspective, without prejudice to the independence and the institutional prerogatives of the Regulatory Bodies which are members of IRG-Rail.

Deliverables

- Continue the dialogue with RNE, the European Commission Services and the other stakeholders on the development of the TTR project with regard to market needs;
- Participate as observers in the relevant TTR meetings (concerning pilot projects) through the relevant representatives of the Access Working Group;
- Update the report on the state of development of the TTR project and its pilots, as well as any national project carried out in preparation for TTR implementation.

b) Monitoring of Rail Freight Corridors

In November 2017 the Members of IRG-Rail agreed on a list of Key Performance Indicators (KPIs) that should encourage both infrastructure managers and railway undertakings to increase performance on rail freight corridors. The members of the Access Working Group will continue the dialogue with the sector, and in particular with the respective infrastructure managers, to encourage and improve the production and use of data on KPIs concerning rail freight corridors, with a view to pursuing the progressive and thorough use of the full list of KPIs agreed upon by IRG-Rail's members in November 2017.

Considering that RNE and the Network of Executive Boards (NexBo) of RFCs have developed their own lists of KPIs, the Access Working Group will continue the dialogue started with these bodies in 2019 with the aim to investigate the possibility to combine/merge the IRG-Rail KPI list with those developed by RNE and NexBo, in order to optimise the added value for Regulators, Ministries, ExBos and RNE of a single and consolidated list of KPIs concerning the performance of RFCs.

Deliverables

- Organise a workshop for members of IRG-Rail to exchange experience of RFC monitoring;
- Organise the IRG-Rail forum, to be held in Berlin on 24 September 2020, to engage with stakeholders about current and future developments for international rail freight;

- Follow, discuss, exchange ideas and, if relevant, report on the ongoing European processes for evaluation of the Rail Freight Corridors and their performance.

c) National practices for planning and monitoring of Temporary Capacity Restrictions¹

The Delegated Decision (EU) 2017/2075 replacing Annex VII of directive 2012/34/EU has significant implications especially for planning, consultation, and international cooperation concerning temporary capacity restrictions. At the same time, the Fourth EU Railway Package has amended article 56 of directive 2012/34/EU by extending the functions of national regulatory bodies to regulatory issues concerning, amongst others, traffic management, renewal planning and scheduled or unscheduled maintenance. The expected growth of rail traffic in the European area and the capacity constraints on some national networks is likely to increase the number of congested infrastructure declarations, especially along main corridors and within conurbations, with impact also on traffic management and planning of infrastructure renewals and maintenance, whose optimisation will become increasingly important.

The Access Working Group will therefore investigate current national practices concerning:

- renewal planning and scheduled or unscheduled maintenance,
- application of Annex VII of directive 2012/34/EU, and its correlations with the management of congested infrastructures, following the implementation into national legislation of article 56, paragraph 1, letter (i) of directive 2012/34/EU.

This activity will take stock of the outcomes of activities carried out by the WG in 2017 on temporary capacity restrictions and in 2019 on congested infrastructure. It may develop over a time horizon of two years, depending on the different degrees of complexity of the national railway systems to deal with.

¹ Also with specific reference to the enforcement of Commission Delegated Decision (EU) 2017/2075 and the implementation of article 56.1 (i) of directive 2012/34/EU as amended by the Fourth EU Railway Package

Deliverables

- Report on the current national practices and regulatory control relating to renewal planning and scheduled or unscheduled maintenance, following the implementation into national legislation of article 56, paragraph 1, letter (i) of directive 2012/34/EU, also with reference to the application of Annex VII of the directive and the management of congested infrastructure.

2. SUB-GROUP ACCESS TO SERVICE FACILITIES

Work streams

a) ECJ on Passenger Platforms

Deciding on a case in Austria, the European Court of Justice (ECJ) ruled on 10 July 2019 that passenger platforms must be considered to be railway infrastructure according to Annex I of Directive 2012/34/EU.

Access to platforms therefore is part of the minimum access package. This topic has been previously handled differently by some member states and consequences of the ECJ decision could be far reaching as the ruling could be understood not only to affect passenger, but also goods platforms and certain technical installations in service facilities. Repercussions are expected, particularly relating to cost calculation, where the classification as infrastructure or service facility implies different calculation methods, pursuant of Directive (costs directly incurred vs. cost plus reasonable profit).

The group will assess the impact of the ECJ's decision regarding the access to stations and terminals and provide an initial analysis of the effects on other service facilities.

Deliverables

- Examination of ECJ decision in the case C-210/18 regarding the interpretation of Annex I to Directive 2012/34/EU.
- Workshop for sharing of experiences on treatment of passenger platforms and related services

b) Tracks in Ports

The European Sea Port Organization, accompanied by Port of Antwerp and Hamburg Port Authority, raised the following question to the European Commission on the ENRRB meeting in May 2019:

Is rail-related infrastructure in maritime and inland ports, including the tracks, considered infrastructure or one (or several) service facility(ies)?

In at least one country, every part of the rail related infrastructure beyond the transfer point, after the main network, including tracks, sidings, and cranes, even the connecting line, are considered service facility in accordance with Annex II Nr. 2

of the Directive 2012/34/EU. In other countries the tracks inside the port are operated by infrastructure managers and are considered rail infrastructure in accordance with Annex I of Directive 2012/34/EU.

The different classification could have repercussions in areas such as:

- State funding (Art. 8 vs. block exemptions)
- Planning and allocation of train paths and slots in terminals
- Access charges
- Safety

Deliverables

- Overview of legal and actual categorization of rail related infrastructure in the main maritime and inland port(s) in all member states.

c) Continued Monitoring of Exemptions granted under Article 2 Paragraph 2

Article 2 Paragraph 2 of Implementing Regulation (EU) 2017/2177 allows for exemptions from the application of the Implementing Regulation subject to a decision of the relevant Regulatory Body. IRG-Rail has developed and published common decision-making principles for the application of the relevant criteria. The exemptions rules of the Implementing Regulation came into force on 1 January 2019 and are applied by the Regulatory Bodies. IRG-Rail adopted a report on the issue on 25 November 2019.

The group will monitor the Regulatory Bodies' activities in that regard and report to the Plenary Assembly on exemption cases and experience.

Deliverables

- Update of the Report on experience gained from exemptions granted under Article 2 Paragraph 2 of Implementing Regulation (EU) 2017/2177.

d) Template and Common Portal

Under Implementing Regulation (EU) 2017/2177 the market was called to create a template in cooperation with the Regulatory Bodies. Such a template was published by RNE on 16 May 2018. IRG-Rail commented on the template in a position paper

published on 18 May 2018. In the paper IRG-Rail suggested a revision of the template.

In May 2019, the European Commission launched a “Common Portal” that, according to the Implementing Regulation, can be used to publish service facility descriptions. The Commission guarantees funding for maintaining and developing the Common Portal for a minimum of two years. An interim Governance Board has been set up where the IRG-Rail Presidency currently participates as an observer.

The group will follow and foster the further development of both the template and the common portal.

Deliverables

- Provide an update on status of Template and Common Portal.

3. EMERGING LEGISLATIVE PROPOSALS WORKING GROUP

In 2020, the focus of the Working Group will continue to be on the implementation and application of European rail transport legislation and in particular on providing input in the development of any emerging legislative instruments. The group will, in cooperation with the Working Groups for charging, access, service facilities or market monitoring, endeavour to contribute to such process based on evidence from regulatory practice. It will also continue to identify and discuss issues of common concern as they arise.

In this regard, the Working Group will:

- monitor and provide input (position papers) to draft legislative instruments and soft measures as and when produced by the European Commission. It will also provide guidance to other IRG-Rail working groups as and when appropriate.
- address issues of implementation of EU legislation of common concern raised by members of the Working Groups, in particular specific issues of legal or legislative nature. This will include exchanging information and knowledge on implementation and transposition, reviewing case studies, as well as liaising with other working groups as necessary;
- at the request of other IRG-Rail working groups, provide at short notice assessments on specific questions of legal nature.

Deliverables

- Develop paper(s) on emerging EU regulation or soft measures subject to the Commission's agenda, in particular on the Delegated Decision amending Annex VII to Directive 2012/34/EU establishing a single European railway area if and when action is taken by the European Commission
- Address specific issues of common interest in relation to the implementation of EU legislation; carry out surveys, review case studies and/or hold workshops with stakeholders, in particular:
 - Identify and organize a workshop on regulatory bodies' handling and implementation of the economic equilibrium test to exchange experience so far;

- Assess concrete issues of implementation and questions of legal nature on ruling on ECJ ruling on classification of platforms;
- Continue to monitor and exchange on cases on anti-competitive discriminatory practices in the rail sector and update the database as necessary.

4. CHARGES WORKING GROUP

Directive 2012/34/EU on the allocation of railway infrastructure capacity and the levying of charges for the use of the railway infrastructure requires Regulatory Bodies to ensure non-discrimination on the railway market and, in particular, check whether charging principles are properly applied, and separation of accounts is fully respected. In 2020, IRG-Rail will continue to develop an understanding of charging principles across the European rail sector. In particular, it will:

- gather, organize and exchange information on charging issues (e.g. charging principles for the use of infrastructure, incentive regulation, mark-ups for international routes);
- discuss regulatory issues related to the examination of cost components and composition of infrastructure charges, as well as to the assessment of direct costs and mark-ups with a view to developing a common understanding thereof;
- seek to understand the implications for railway charges of the opening of the domestic passenger market.

Deliverables

- Update the Charging Principles Overview paper (with a more specific focus on direct costs)
- Finalize the paper on current practices for the calibration of mark-ups for international passenger services
- Start Drafting a Paper on segmentation and the calculation of mark-ups

Should resources allow, the Working Group will address the following topics:

- Exchange with EU Commission on understanding of Long-Term Cost
- Explore the charging units used among IRG-Rail Members-States
- Discuss Incentive Regulation.
- Meet with external stakeholders (e.g. Prime or ERFA) to foster exchange between regulatory bodies and the market;

5. SUB-GROUP CHARGES FOR SERVICE FACILITIES

a) Background

The sub-group Charges for Service Facilities has the goal of getting a better understanding of the Directive 2012/34/EU on setting charges for service facilities. It also intends to reflect and discuss the problems and decisions of the regulatory bodies when investigating the charges of service facilities. The working group aims to share good practices and tries to give guidance to regulatory bodies, whenever possible.

More specifically, the working group will:

- seek to develop a common understanding of the implementation of EU charging principles for service facilities;
- develop a common position, in particular on the costs for access to service facilities and for providing services.

Deliverables

In 2020, the working group is determined to continue this work by focussing on the topics mentioned below.

- An outline for a first report on charges for freight terminals (comparison of charges and charges principles of the basic service of the terminal)

Should resources allow it an extra focus will be on:

- An update of the 2019 paper on charges for stations or on any other further analysis on this topic.
- A report on determining the reasonable profit with focus on determining the Beta for the calculation of the WACC.
- An update of the paper on the economic approach of charging principles. This paper will be published by IRG Rail in 2019 for the first time.
- An update of the paper on charges for storage sidings. This paper was published by IRG Rail in 2018 for the first time.

6. MARKET MONITORING WORKING GROUP

The monitoring reports produced by this Working group provide annual overviews of the economic conditions and market developments in the railway sector. They also show the development of the European railway market and its competitiveness compared to previous years.

In addition to presenting the main findings of the annual data collection, each annual monitoring report focuses on a specific topic. In 2020, the Working group will carry out a deeper analysis of the network usage intensity for the focus of the ninth report. The aim would be to explore the explanatory factors of the big differences we observe between countries. This could be done by a crossed evaluation of several factors such as:

- Characteristics of the network: age, level of investments, etc.
- Charges: structure and level of track access charges
- Network utilisation
- Level of competition

The Working group will continue to mobilize its best efforts to work on the intermodal freight transport. In 2019, as an attempt to address this subject, the Working group collected five compulsory indicators (three of which had been optional before) of intermodal freight transport. However, data of only eight over 31 countries were supplied in a sufficient manner. Given this poor data availability, the Working group proposes to collaborate with the Charges for Service Facilities Sub-Working group which intends to realize a study on this topic in 2020 in order to carry out a joint paper. Such a proposal will be discussed with the Chairperson of the other Working group during the Network meeting on 14 October 2019.

Additionally, the Working group will investigate the fifth edition of the Glossary of transport statistics (Eurostat, UNECE and ITF) as well as the revision of the Commission's Implementing Regulation (EU) 2015/1100 of 7 July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring (including its questionnaire for the data collection). Depending on this revision, the Working group will issue a position paper on this subject. In the meantime, if it is necessary to harmonize the common definitions in IRG-rail's

Guidelines on market monitoring with those in the Glossary of transport statistics, the guidelines will be updated.

Deliverables:

- Publication of the eighth IRG-Rail market monitoring report at the beginning of 2020, with a focus on the competitive situation in the rail passenger and freight transport markets in each country.
- With the data collected in 2019, the Market Monitoring Working group will give its support to the Charges for Service Facilities Sub-Working Group to develop a joint paper on intermodal freight transport.
- Furthermore, depending on the EC's revision of the (EU) 2015/1100 regulation and in particular its questionnaire for the data collection, the Working group will elaborate a position paper on this issue.

Annex

Working Groups and Sub-groups

	Name	(Co-)Chaired by	Contact person(s)
1	Working Group Access	ART-I	Roberto Piazza
		Transportstyrelsen	Gustav SJÖBLOM
2	Sub-group Access to Service Facilities	Bundesnetzagentur	Christian Wolf
		Transportstyrelsen	Helena Öhman Nikolaisen
3	Working Group Market Monitoring	AMT	Teresa Gonçalves
		ART-F	Anh Lai
4	Working Group Emerging Legislative Proposals	Bundesnetzagentur	Andrea Sanders-Winter
		ORR	Agnès Bonnet
5	Working Group Charges	Belgian Regulatory Body for Railway Transport	Rodolphe Duterme
		Bundesnetzagentur	Max Meulemann
6	Sub-group Charges for Service Facilities	CNMC	Alberto Oeo Pizarro
		Schienen-Control	Andreas Himmel