

## Independent Regulators' Group – Rail

### IRG-Rail

### **Work Programme 2022**

November 2021

IRG-Rail is the network of independent rail Regulatory Bodies from 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 countries' governments.

## INTRODUCTION

In 2021 IRG-Rail celebrated its tenth anniversary. On 9 June 2011, 15 regulating bodies from Europe signed a memorandum of understanding in The Hague and established the Independent Regulators' Group-Rail. Since then, the network has grown and now includes 31 members from across Europe. IRG-Rail has become a reliable actor within the European railway sector.

Although the focus of IRG-Rail's attention and the scope of our activities has shifted from time to time and grown over the last ten years, the objectives remain to promote

- a consistent and harmonised approach to the regulatory framework for railways by its members;
- the development of regulatory best practice in the railway sector in Europe for the benefit of both passengers and rail freight users;
- sustainable and effective competition in the rail passenger and freight transport market as well as a level playing field across transport modes;
- transparency in the railway sector.

For good reason IRG-Rail voiced its support for the European Year of Rail 2021. After all, the goals of this initiative by the European Commission and others are in line with the objectives IRG-Rail presented in its Strategy Document 2021-24, i.e. to promote

- effective and efficient regulation applied consistently across Europe,
- a resilient, open and sustainable European railway sector,
- best regulatory practice for the benefit of passengers and rail freight users.

In 2021 the Members of IRG-Rail also invested considerable time and effort in an organisational reform process leading to a revision of the founding document of IRG-Rail, the Memorandum of Understanding 2011, and IRG-Rail's Working Arrangements. Like the railway sector in general, IRG-Rail has met with actors and projects on a European scale dedicated to solutions to Europe-wide challenges. As European Network of regulating bodies IRG-Rail is committed to be a constructive and vocal partner to such initiatives in the interest of and to the benefit of the European railway sector, its users and customers.

Against this background the main points of the reform were to streamline the decision-making process by introducing a majority voting system and to bring up to speed the network's rules on confidentiality and sharing of data. This will enable IRG-Rail to respond quicker and with more ease to current developments of the sector and to specific requests from its stakeholders.

2022 will be the first year in which IRG-Rail works according to this revised statutory setup with an aim to become an even more vocal and engaged partner to the European railway sector. Among other things the reform will further deepen the cooperation between IRG-Rail's Members, the regulating bodies of 31 countries, and thereby make IRG-Rail's work more effective in a time when railways in Europe are recovering from the COVID-19 pandemic. In the best of cases this recovery will be embraced as an opportunity to move towards alternative forms of a more sustainable transport system which meets the needs and wishes of people. Rail transport is environmentally friendly and energy-efficient. By increasing

the number of passengers and volumes of freight it can serve as one of the important means to reduce CO2 emissions.

Railways in Europe form a complex system of different networks, actors and legislators. Effective regulation and regulators are indispensable for this complex framework. In particular, the members of IRG-Rail are focused on implementing effective regulation by fostering transparent, non-discriminatory and appropriate access to railway infrastructure in order to safeguard effective competition. In this regard, IRG-rail stands ready to help all efforts to reach the ambitious development target for the rail sector.

This document outlines the Work Programme 2022 which is submitted to the Plenary Assembly for adoption.

## WORK PROGRAMME 2022

### 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.

In 2022, the Access Working Group will continue monitoring access issues and continue to engage with the topics from previous years: TTR, rail-freight corridors (as well as new initiatives for international passenger traffic), and the coordination of temporary capacity restrictions. In addition, the group will take on the task to gather experiences on the new Network Statement Common Structure. These topics cover the most important themes in the current European railway market.

#### a) The TTR project and the revision of the rail freight regulation (EU) 913/2010

Since 2014, railway stakeholders have been working on a major project under the name TTR (Redesign of the International Timetabling Process). Their aim is to create a new and harmonized process for the allocation of capacity in Europe in time for implementation in the 2025 Time Table.

IRG-Rail has followed the development of TTR for several years and published several reports. The latest report from May 2021 focused in particular on regulatory issues which should be addressed in the upcoming revision of the legal framework.

In early 2021, the European Commission entered into preliminary discussion on TTR with Member States through an expert group. IRG-Rail expects the main output of this group to be a gap analysis representing the European Commission Services' views on the limitations of the current legal framework together with remarks from the Member State representatives.

In the autumn of 2021, the European Commission will proceed with an impact assessment on measures to better manage and coordinate international rail traffic, including through revised rules for capacity allocation and infrastructure charging in rail. This impact assessment will also serve as the basis for the forthcoming revision of the rail freight regulation (except for certain parts of the RFR which will be dealt with in the context of the revision of the TEN-T regulation).

The impact assessment and legal proposals which may follow from it will be a main task for the WG Access in 2022, if relevant in cooperation with the WG Emerging Legislative Proposals.

In the meantime, RNE and its members will continue to refine the TTR project proposal, proceed towards implementation of TTR. The 11 infrastructure managers who have accepted to be part of the first-wave implementation will run implementation pilots on their networks. Moreover, all RNE members will continue work towards full implementation of the TTR project, with the delivery of the capacity strategy for TT 2025 in December 2021 and the preparation of the capacity model during 2022. The Access Working Group will monitor this process for full implementation in dialogue with stakeholders.

Since 2019, the Access Working Group has had a dialogue with RNE, FTE, the Services of the European Commission, and other stakeholders (ERFA, CER, Allrail) with the aim to exchange views on the TTR project. Some regulatory bodies have also engaged with domestic parties on the project. This stakeholder dialogue will continue in 2022.

## Deliverables

- Continue the dialogue with RNE, the European Commission Services and other stakeholders on the development of the TTR project with regard to market needs;
- Contribute to the task force on the impact assessment coordinated by the WG ELP;
- Exchange views on implementation pilots and national work towards implementing the capacity strategy, capacity model and other aspects of full implementation of TTR;
- Report on IRG-Rail's observations on and/or engagement with the development of TTR and other initiatives to reform capacity management in Europe.

### b) Monitoring of Rail Freight Corridors

Article 20 of the Rail Freight Regulation gives regulatory bodies the duty to cooperate in monitoring the competition in the rail freight corridors. To the extent that the group's resources allow in light of the ongoing revision of the regulation, the Access Working Group will endeavour to provide support to regulatory bodies in order to make this monitoring coherent and effective.

To provide a qualitative basis for this monitoring, the group will continue the work initiated in 2019, when the Access Working Group organised a workshop to share experiences of monitoring Rail Freight Corridors. This exchange has the promise of helping to provide a more coherent and effective monitoring across Rail Freight Corridors.

## Deliverables

- Exchange experience of RFC monitoring between members of IRG-Rail and, if suitable, with external stakeholders.
- Organise a workshop or roundtable on regulatory bodies' approaches for monitoring the organization and functioning of the different RFCs.

### c) Planning Temporary Capacity Restrictions according to the revised Annex VII

The Delegated Decision (EU) 2017/2075 replacing Annex VII of directive 2012/34/EU has big implications especially for planning, consultation, and international cooperation concerning temporary capacity restrictions. With the 2021 Time Table all rules in the revised Annex have come into force. The rules have already provided to be a driver of change in national and international planning practices, and moreover constitute one building-block for the TTR project.

In 2021, IRG-Rail WG Access published an overview of the experiences of Regulatory Bodies so far. The paper provided an overview of cases involving Delegated Decision (EU) 2017/2075 and a presentation of the main issues arising from the experiences of Bundesnetzagentur and Transportstyrelsen which have performed in-depth monitoring of the application of the Delegated Decision in Germany and Sweden. Following the publication, the WG Access will set up exchanges with key stakeholders on the implications of the overview.

In 2022, IRG-Rail WG Access will continue to gather the experiences of Regulatory Bodies and stakeholders.

## Deliverables

- Gather and discuss experience of group members of monitoring the implementation of rules on TCR in decision (EU) 2017/2075.
- Engage with key stakeholders on observations of overview paper.

### d) Network Statement Common Structure

On 4 December 2019, the RNE General Assembly approved a new Network Statement Common Structure (NSCS) to be applicable from timetable 2022. While the NSCS is not part of the legal framework and not compulsory for IMs, it is an important part of IM's common endeavour to harmonise the way in which they set out the nature of the infrastructure which is available to railway undertakings, and publish information setting out the conditions for access to the relevant railway infrastructure (art. 27 of directive 2012/34/EU). This is likely to become even more important in the future, as RNE steps up their effort to provide digitalised network statements and corridor information documents.

In 2022 all RBs will have had the opportunity to gather experience of IM's publishing information according to the new NSCS and allocating capacity on the basis of the new format. The timing is suitable to exchange experiences of the revised NSCS and, if possible, identify areas where the application raises general issues or may require different interpretations in different national contexts.

## Deliverables

- Gather and discuss experience of group members of monitoring the publication of network statements according to the revised Network Statement Common Structure.
- Exchange views with RNE and possibly other stakeholders.
- Report to the Autumn Plenary.

## 2 SUB-GROUP ACCESS TO SERVICE FACILITIES

### a) Private sidings

According to Annex I of Directive 2012/34/EU, railway infrastructure consists of the items listed in this Annex, “excluding (...) private branch lines or sidings.” However, a definition of the term “private siding” is not offered in European law. In addition, the considerations in recital 12 and the exemption rule in Article 3 par. 2 and 3 lit. d) of the Directive seem to lead in different directions. Therefore, IRG-Rail started investigating this topic in 2021.

The discussion shows that this topic is interwoven not only with questions regarding the definition of terms of Directive 2012/34/EU but as well with different understanding of the scope of regulation, especially at the connecting points with different modes of transport.

To develop an understanding IRG Rail SG Access to Service Facilities analysed national cases and developed a questionnaire for the Regulatory Bodies on their national approach and understanding which was distributed in the last quarter of 2021.

Analysing the answers to that questionnaire and improving the understanding of different national approaches in a workshop will contribute to an overview of the legal and practical approach in each country in 2022. The results from the workshop will be presented in an overview paper that will help setting the basis for a common understanding on private sidings.

### Deliverable

- Public analytic paper on the term “private sidings” for Autumn Plenary.

### b) Rail Facilities Portal

In May 2019, the European Commission launched the Rail Facilities Portal (the RFP), which according to the Implementing Regulation 2017/2177, can be used by the operators of service facilities to publish service facility descriptions. In 2020, RNE took over the management and development of the RFP, with support of UIRR. The Commission continues to guarantee funding for maintaining and developing the RFP until 2023. After that period, the RFP will have to cover its cost by itself.

Within the corresponding Governance Board, the group chairs take part as observers and secure an exchange of information. In 2021, IRG-Rail SG Access to Service Facilities intensified the monitoring of the development and use of the RFP. IRG-Rail observed that some stakeholders see the RFP as an important tool to offer transparent information on the services offered in service facilities throughout Europe. However, according to Directive 2012/34/EU, the RFP is only one of several possibilities to publish information on service facilities.

IRG-Rail SG Access to Service Facilities will continue monitoring the further development and usage of the portal and will respond appropriately. In addition, the SG will closely examine the role of the regulatory bodies with respect to the RFP.

## Deliverable

- Workshop and internal update to the plenary. Statement on the role of the regulatory body

### c) Scope of regulation in seaport-terminals

After active discussions with the European Commission, DG Move, at the end of 2020 and beginning of 2021, on the scope of rail regulation applying to rail related assets in seaport terminals and on possible criteria to distinguish between rail and port regulation, the IRG-Rail SG Access to Service Facilities has decided to carry out a deeper analysis of the topic.

The SG will prepare a short public statement on the rights of applicants other than railway undertakings to request access to service facilities. The statement will provide a general overview on the national approaches and will look at the implications such requests for access might have on the criteria for applying rail regulation. After publication of this statement, the SG will proceed with the analysis of rail regulation applying in tri-modal terminals (might it be a sea- or inland-ports). A further questionnaire, to be developed in 2022, should aim to further explore the national approaches and give an overview on those.

## Deliverable

- Statement on applicants depending on resources by the end of 2021 (2) depending on resources and outcome of a second questionnaire internal review for Autumn Plenary 2022

### d) Workshop on Maintenance Facilities

Discussion within the IRG-Rail SG Access to Service Facilities showed that applying rail regulation on maintenance facilities often raises challenges maintenance facilities' operators argue that rail regulation does not apply to them for numerous reasons.

Depending on resources, the SG will investigate the maintenance facilities markets and identify national approaches in a workshop.

## Deliverable

- Internal presentation summarising the workshop results to autumn plenary.

## Further Topics

### e) Involvement of service facilities in TTR and the revision of RFC regulation

The IRG-Rail SG Access to Service Facilities Rail realizes that the allocation of capacity in service facilities is not yet sufficiently addressed in the process of the project "timetable and capacity redesign (TTR)". As the project "TTR" progresses, the coordination of train path allocation and allocation of capacity in service facilities may become a topic of common interest for stakeholders in 2022. The planned revision

of the Rail Freight Corridor Regulation (EU) 913/2010 may also pay more attention to the implication of train-path allocation with respect to the capacity allocation process in service facilities.

IRG-Rail WG Access will closely monitor the project "TTR" and a task force will look at the comprehensive topic of the revision of the Corridor Regulation. The SG will support the WG Access' as well as the task forces work with regard to service facilities and respond appropriately depending on resources.

## Deliverable

- Oral report to the plenary

### f) ECJ Decisions with regard to service facilities

The decisions of the European Court of Justice in 2021 showed that topics with regard to the regulation of service facilities come into focus as Regulatory Bodies intensify their regulation after the Implementing Regulation (EU) 2017/2177 entered into force in 2017 .

IRG-Rail SG Access to Service Facilities will monitor ECJ decisions related to service facilities and act appropriately as required and depending on resources.

## Deliverable

- Oral report to the plenary

## 3 EMERGING LEGISLATIVE PROPOSALS WORKING GROUP

The Working Group will continue to monitor the implementation and application of European rail transport legislation and in particular provide input in the development of any emerging legislative instruments. It will contribute as necessary to the forthcoming EC work regarding measures to better manage and coordinate international rail traffic, including through revised rules for capacity allocation and infrastructure charging in rail. In particular the group will seek to engage with the consultant appointed by the EC and will cooperate with the other Working Groups, contributing to such process based on evidence from regulatory practice. It will also continue to identify and discuss legislative issues of common concern as they arise.

In this regard, the Working Group will focus on two activities:

### a) Emerging legislation

The Group will continue to monitor and provide input (position papers) to emerging 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. This will include providing support to the Market Monitoring Working Group on legal aspects of the revision of regulation EU 2015/1100 on the reporting obligations of Member States in the framework of rail market monitoring, if appropriate.

The Group will assemble and coordinate the cross-working group Task Force working on the policy options set out in the EC impact assessment on measures to better manage and coordinate international rail traffic.

## Deliverables

- Public position papers(s) on emerging EC legislation as and when required
- Contribute to EC “Impact assessment on measures to better manage and coordinate international rail traffic, including through revised rules for capacity allocation and infrastructure charging in rail”, liaising with all working groups concerned, e.g. with written and oral contributions.
- Support Working Group Market Monitoring by producing, as requested, analysis of legal aspects of revision of Rail Market Monitoring System.

### b) Implementation of legislation

The group will 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, holding workshops with stakeholders, as well as liaising with other working groups as necessary.

## Deliverables

- Workshop to exchange of experience on issues of legal or legislative nature of Regulatory Bodies' decisions.
- Internal written assessment on specific questions of legal nature at the request of other IRG-Rail working groups.

## 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 2022, 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

- Produce a report on direct costs updating the original papers from 2012, 2014, and 2016

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

- Exchange with EU Commission on understanding of Long Term Cost
- Main charging units used among IRG-Rail Members-States
- Incentive Regulation
- Meeting with outside stakeholders (e.g. Prime or ERFA) to foster exchange between RBs and the market

## 5 SUB-GROUP CHARGES FOR SERVICE FACILITIES

### a) Background

The sub-group Charges for Service Facilities aims to get 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, particularly on the methods for calculating costs for access to service facilities and for providing services.

## Deliverables

In 2022, the working group is determined to continue this work by focusing on the topics mentioned below:

- A workshop for a first benchmark on the investigation of charges for SFO with focus on competences of the RB, role of parties involved, required documents and the account separation. After the workshop the results will be presented to the Plenary Assembly meeting. After this presentation, the sub-working group will request from the Plenary Assembly a decision on how to proceed with regards to this topic (e.g. whether to draft a written report and whether such a report shall be published upon completion and adoption by the Plenary).

- A first overview of the topic of traction current as mentioned in Annex II point 3 of the directive 2012/34/EU. This overview shall be published.

## Should resources allow it an extra focus will be on:

1. An update of the paper on the economic approach of charging principles. This paper was published by IRG Rail in 2019 for the first time.
2. An update of the paper on charges for storage sidings with the extension of the content. An in-depth analysis of charges shall try to explain differences and try to analyze if the storage routines of RUs are affected by charges. This paper was published by IRG Rail in 2018 for the first time.
3. An update of the 2019 paper on charges for passenger stations or on any other further analysis on this topic. One aspect of this report will be the changes in the charging systems for passenger stations due to the ECJ ruling on platforms.
4. A first report on charges for marshalling yards. This report shall be published.

## 6 MARKET MONITORING WORKING GROUP

The monitoring reports produced by the Working group provide an annual overview 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 the continuum of its last publications<sup>1</sup>, the 10<sup>th</sup> Market Monitoring report will depict and analyse the impacts of the Covid-19 pandemic on European rail market in 2020. Besides including all usual indicators, this report will also provide some in-depth analyses of:

- Financial indicators (TAC, revenues),
- Breakdown of traffic by RU type, national/international service.

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 July 7<sup>th</sup>, 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, which should be released for public consultation at the beginning of 2022, the Working group will discuss with the ELP Working group about the opportunity to 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.

For its 11<sup>th</sup> Report, the Working group decided to include a focus chapter on the post-crisis developments in the rail market. It will start to work on the draft questionnaire in October-November 2021 and the data collection will be carried out in mid-2022. In consequent, the in-depth analysis of the rail network usage per country will be the focus topic of the 12<sup>th</sup> Report. This subject was chosen for the focus in 2020 but postponed due to priorities given to Covid-19 analyses.

---

<sup>1</sup> The 9<sup>th</sup> Market Monitoring report (April 2021) and the Covid-19 mid-year publication (July 2021)

## Deliverables

- Publication of the 10<sup>th</sup> Market Monitoring report in spring 2022, with deeper analyses of the impacts of the Covid-19 pandemic on financial indicators and rail traffic broken down by categories of RU and services.
- 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 collaborate with the ELP Working group to realize a position paper according to the joint and careful assessment of the opportunity to carry out this task.

## 7 TASK FORCE ON MULTIMODALITY

While Covid-19 had an immediate significant impact on collective transport in general, and rail transport in particular, there is still a great measure of uncertainty about the medium to long term effects on the functioning of the sector.

In order to recover the 2019 levels of demand, in the aftermath of the pandemic it is necessary to promote the recovery of the sector by increasing its attractiveness, including by providing multimodal mobility solutions, in particular through the innovative combination of traditional forms of collective transport and individual and shared mobility services. The railway sector, too, offers examples of bundling of services which raise issues of access to infrastructure, be it physical or intangible. In Italy, for example, combinations of rail & sea, rail & bus, rail & taxi, rail & urban mobility services may be observed, both at national and regional level. Similar examples are found in other EU countries as well.

In this respect, the dissemination of Mobility-as-a-Service (MaaS) platforms offering combinations of rail transport services with other modes of collective and individual transport is an innovative tool, including for the extension of demand in the sector. At the same time, the need arises to adapt the role of national regulators, be they rail or multi-sectoral, to the context of the new mobility ecosystem that will result from the progressive deployment of these new tools and the ensuing new outlook for the regulation of access and services.

The objective of the proposed activity is firstly to identify, starting from case studies on the implementation of MaaS systems in the countries represented in the Network, the necessary conditions for the deployment of such systems, together with their possible implications on the application of the existing regulatory measures and the related innovative features that may be the subject of future regulation. The identification of the elements characterising the implementation of MaaS platforms at national and sub-national level will also provide the basis for future developments aimed at ensuring door-to-door mobility at the EU level.

The results from the activity will be presented in an overview paper aimed at describing MaaS systems implemented in the countries represented in the Network and identifying regulatory implications.

### Deliverable

- Internal analytic paper on the regulatory implication of MaaS platforms.

## ANNEX

### Working Groups and Sub-groups

	Name	(Co-)Chaired by	Contact person(s)
1	Working Group Access	ART-IT	Roberto Piazza
		Transportstyrelsen	Gustav Sjöblom
2	Sub-group Access to Service Facilities	BNetzA	Ulrike Weyers
		ART-IT	Vincenzo Carpinelli
3	Working Group Emerging Legislative Proposals	ORR	Agnès Bonnet
		BNetzA	Christian Wolf
4	Working Group Charges	Régul	Rodolphe Duterme
		BNetzA	Max Meulemann
5	Sub-group Charges for Service Facilities	CNMC	Alberto Oeo Pizarro
		Schienen-Control	Andreas Himmel
6	Working Group Market Monitoring	ART-FR	Anh Lai
		AMT	Isabel Oliveira