

## Independent Regulators' Group - Rail IRG – Rail

### Work Programme 2023

*Draft - for decision at the Plenary Assembly*

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*November 2022*

The IRG-Rail is the "Independent Regulators' Group – Rail", a network currently comprising 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 the members of Regulatory Bodies do not necessarily reflect the official views of their respective countries' governments.

## INTRODUCTION

In 2022, IRG-Rail worked according to the new revised statutory arrangements which proved practical and inclusive, enabling simpler management of activities and more strategic discussion on working group's activities and railway regulation overall, thus strengthening the Group's position as an engaged partner to the European railway sector. IRG-Rail promotes intra-modal and inter-modal competitiveness of the European railways contributing to the European Union to change transport needs, energy-efficient policy and climate goals. The overall trends in terms of the European rail modal share for both; freight and passenger rail transport should be improved by working further on achieving the Single European Railway Area and conditions for a genuine shift to rail.

In the current year IRG-Rail has studied new technological trends based on the use of algorithms, machine learning and artificial intelligence techniques which are likely to impact numerous economic sectors including railways in the near future. IRG-Rail took particular note of the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). In some cases algorithms may determine market behavior of undertakings to the detriment of competitors and consumers. Therefore, regulators should remain vigilant in this digitalised and data driven environment and should continue expanding their expertise on artificial intelligence, exchange their findings within IRG-Rail as well as with stakeholders. In data gathering and processing or decision making, artificial intelligence techniques can be useful in connecting different types of transport (multimodality, integrated public transport), non-discriminatory capacity allocation for applicants or setting priority rules in the railway traffic control process. Other use cases such as passenger information, maintenance prediction and cost optimization for rolling stock infrastructure are already present.

In the coming period IRG-Rail will remain committed to exchanging the national regulatory best practices, studying current railway policies, looking after easing of cross-border transport to supporting the overall functioning of the Single European Rail Area. European railways are still recovering from the COVID-19 pandemic consequences, being faced again with new challenges related to the rise of price of electricity and diesel in Europe and sometimes slow supply chains. IRG-Rail has prepared a work programme for 2023 which focuses on expert analysis and market monitoring primarily regarding the market competition protection, railways legislation and cooperation on rail policies with all stakeholders.

## WORK PROGRAMME 2023

### 1 ACCESS WORKING GROUP

#### a) Revision of the Rail Freight Regulation and implementation of TTR

The Working Group will continue its longstanding work involving the revision of Regulation (EU) 913/2010 and the development and implementation of the TTR model for capacity management and allocation. The main work for 2023 will consist in assisting the IRG-Rail Task Force led by the ELP Working Group in providing input on emerging draft legislation and other measures stemming from the European Commission initiative to “better manage and coordinate international rail traffic, including through revised rules for capacity allocation and infrastructure charging in rail”.

Since measures relating to infrastructure charging were omitted from the impact assessment (with the exception of incentive schemes in capacity and traffic management), the WG Access will support the work planned by WG Charges to write an overview paper on charges-related barriers to international rail freight services. WG Access will contribute a summary of the findings of recent reports and studies on barriers to international freight traffic.

#### Deliverables

- Written and oral support to the ELP Working Group.
- Contribute to WG Charges a summary of the state of knowledge on barriers to international freight.
- Exchange with key stakeholders on TTR.

#### b) Potential barriers to entry related to ERTMS onboard safety systems

Before full deployment of ERTMS across Europe is achieved, legacy signalling and safety systems will coexist alongside ERTMS on different parts of the network. At least in some parts of Europe, this is a major cause of interoperability problems which can hinder cross-border services, especially for new entrants. Regulatory bodies are responsible for ensuring non-discriminatory access to the rail network and therefore have a role to play if new entrants were to face technical issues related to these systems.

IRG-Rail will therefore write a paper to provide an overview of difficulties faced by new entrants across Europe as well the measures implemented by Member States to mitigate market issues related to signalling systems on their network. The paper may also explore the possibilities for regulatory bodies to facilitate the deployment of ERTMS or the implementation of mitigation measures. For the analysis of economic and financial aspects of ERTMS, WG Charges will provide support.

## Deliverables

- Paper for external publication at the Spring 2024 Plenary.

### c) Monitoring Rail Corridors

The upcoming revision of the Rail Freight Corridor Regulation (EU) 913/2010 may have big implications for the monitoring duties of Regulatory Bodies. Among other things, the current Rail Freight Corridors appear likely to be transformed into Rail Corridors encompassing passenger transport as well. In the meantime, IRG-Rail and its members will continue and improve monitoring activities of corridors in order to be well-prepared for future reforms:

#### *1) Analysing the outcome of the TEN-T revision*

In December 2021, the European Commission published a proposal for a regulation on Union guidelines for the development of the Trans-European Transport Network (TEN-T), amending Regulation (EU) 2021/1153 and Regulation (EU) 913/2010 and repealing Regulation (EU) 2013/1315. The regulation is currently under review by the Council of the European Union. A revised regulation on TEN-T guidelines is expected to be published during 2023. While the development of the railway infrastructure is not obviously part of Regulatory Bodies' monitoring duties, the outcome of the current revision of the TEN-T guidelines will have important impact on several aspects of market access, including the organisation of European Transport Corridors and the availability of cross-border infrastructure. The WG Access will therefore go through the revised TEN-T guidelines and summarise the potential implications for regulatory bodies.

#### *2) Discussing KPIs with NexBo*

In 2017, IRG-Rail published a list of Key Performance Indicators (KPIs) for Rail Freight Corridors. The Network of Executive Boards (NExBo) has announced an interest in working together with IRG-Rail to develop uniform KPIs. While progress towards relevant and unified KPIs has proved to be difficult, IRG-Rail considers it is important to continue examine objectives and definitions for KPIs together with other stakeholders as part of the planned monitoring of Rail Freight Corridors.

#### *3) Evaluating and improving monitoring practices*

The WG Access will continue discussing current practices for monitoring rail freight corridors according to article 20 of regulation (EU) 913/2010 and potential approaches to improvement.

## Deliverables

- Oral presentation of the revised TEN-T regulation.
- Workshop or roundtable with group members on the implications of the revised TEN-T regulation.
- Exchanges with stakeholders (NExBo and possibly RNE, and others) on KPIs for rail corridor monitoring.
- Workshop or roundtable with group members on potential improvements and common approach to monitoring of Rail Corridors.

## 2 SUB-GROUP ACCESS TO SERVICE FACILITIES

### a) Guidelines for the establishment of Service Facility Descriptions

In May 2017, the European Commission launched the Rail Facilities Portal (the RFP), which can be used by the operators of service facilities to publish service facility descriptions (SFD). In 2020, RNE took over the management and development of the RFP, with support of UIRR. Over the last two years discussions have taken place with RNE and the Commission on the extent of IRG-Rail's support for this RFP. In April 2022, IRG-Rail published a statement to clarify the neutral role of Regulatory Bodies with regard to the means of publication of SFDs, highlighting the RFP advantages of easy to access and comprehensive digital information on service facilities.

IRG-Rail is committed to further support digital platforms dedicated to improve information on service facilities in Europe. In addition to taking part in the governance board of the RFP and offering expert information, discussions and considerations, IRG-Rail has committed in this statement to come up with guidelines on the content of Art. 4 of the Implementing Regulation (EU) 2017/2177 (IR).

Art. 4 of the IR lists the minimum content of the SFD. However Art. 4 IR uses generic terms with some examples and is designed as a non-exhaustive list. Therefore the operators of service facilities, especially if they are not the incumbent, are often uncertain about the type of information that needs to be included in the SFD. In some member states RBs provide guidelines on the establishment of SFD. In the spirit of the supporting letter for the RFP and to improve the publication of SFD in Europe, the Subgroup Access to Service Facilities has formed a task force to draft such guidelines.

## Deliverables

- Public guidelines to Spring Plenary 2023

### b) Scope of railway market regulation in (seaport) terminals

After several discussions with the European Commission, DG Move in 2020 and 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 has decided to carry out a deeper analysis of the topic.

At the end of 2021 IRG-Rail published a short public statement on the rights of applicants other than railway undertakings to request access to service facilities. In the same year, IRG-Rail published a report focusing on the regulatory approach regarding tracks in ports.

The question as to which parts of a terminal, not only in a seaport environment, fall under railway market regulation as part of a service facility is an important topic. It determines, among other things, the scope of the access to be granted, the charging criteria, as well as the content of the SFD. Relying on transparent information as well as on fair and non-discriminatory conditions on access to terminals is a crucial factor of development for rail freight services in order to reap the benefits of a growing multimodal traffic.

## Deliverables

- Public review for Autumn Plenary 2023

### c) Service facilities in TTR and revision of EU regulation

In 2022 the European Commission launched 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”. The “TTR” project is ongoing and some of the concepts are included in the impact assessment. The impact assessment mentions the implications of train-path allocation with respect to the capacity allocation process in service facilities. The group will continue to monitor this subject and will provide input to the IRG Rail public positions liaising closely with the relevant IRG-Rail working groups.

## Deliverables

- Input to the Task Force or Working Group and oral reports to the plenary.

## d) Round table on ECJ decisions with regard to service facilities

The decisions of the European Court of Justice show that topics with regard to the regulation of service facilities move into focus as regulatory bodies intensify their monitoring whether service facility operators are in line with the Implementing Regulation (EU) 2017/2177 that entered into force in 2017. The group will continue monitor decisions related to service facilities and act appropriately as required and depending on resources.

### Deliverables

- Oral report to the plenary.

## 3 EMERGING LEGISLATIVE PROPOSALS 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 ongoing 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 European Commission 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.

The Group continue to 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.

## 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.

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

- Workshop on organisational setup of IRG-Rail members (the working group will share experiences on the processes/methods for handling complaints, including their operational set-up).

## 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 2023, 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.

The Working Group Charges will follow the following topics:

- International freight services.
- Support of the Working group Access on financial aspect of ERTMS as the WG Access plan to produce a paper on ERTMS.
- Dialogue with Prime as they have released a new benchmark report this year (but without producing any paper on this topic).

## a) International Freight Services

In 2020, the working group Charges had prepared and published an overview paper on the international passengers services. This paper made an overview about the international passenger services in Europe and the level of charges. Next year, we plan to do a similar exercise for the international rail freight services. The working group is not aware of another overview paper comparing freight charges and barriers across Europe.

The paper would also look at special infrastructures and corridors and look at the charges level across countries. Legally differences are of course possible, but it would be interesting to be able to explain why there are such differences.

## Deliverables

- Produce an overview paper on international rail freight services with a focus on
  - Charges differences at borders (only collect general data not line specific as for the pax paper) and across corridors
  - Analysis of charging related barriers for RUs to obtain good estimates of TAC for cross border traffic (in particular review of the functionality of the CIS platform)
  - Analysis of possible other non-charging related barriers jointly with the WG Access

## b) ERTMS

Support of the Working group Access on financial aspect of ERTMS as the WG Access plan to produce a paper on ERTMS

### Deliverables

- To be defined with the Working group Access

## c) Exchange with PRIME

Dialogue with Prime as they have released a new benchmark report this year.

### Deliverables

- N/A

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

- Produce an overview paper on performance regimes
- Produce an overview paper on efficiency regimes

## 5 SUB-GROUP CHARGES FOR SERVICE FACILITIES

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 trying 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.

## a) Economic principle

In 2019 IRG-Rail published an initial report on the charging principle of Article 31 (7) of Directive 2012/34/EU, covering several topics related to the types of costs and cost models, approach to reasonable profit and other topics related to the calculation of charges.

Since then, the WG has continued debating topics related to the economic principle of charges for service facilities in presentations, round tables and case-studies. As a result, several topics of interest were identified. For 2023, the WG will address these topics more in depth.

## Deliverables

In 2023, the working group is determined to continue this work by focusing on the topics mentioned below:

- An update of the paper on the economic approach of charging principles of Article 31 (7) and Article 31 (8) of the Directive 2012/34/EU. This paper was published by IRG Rail in 2019 for the first time.

## b) Charges for Traction Current

In 2022, IRG-Rail published an overview document on the Charges for Traction Current, describing charging systems for this service across the member countries. This document highlighted the relevance of energy consumption for RUs and the differences in the way of providing and charging for this service.

- The group will continue the discussions on this topic by further exploring the implementation of power meters (EMS devices) on trains and TSIs, paying special attention to the effect on cross-border traffic, its connection with the possibility of choosing energy supplier and the possible incentives to foster its implementation.

There are no deliverables associated to this topic, as the production of a document is subject to a successful outcome after the discussions. If the group concludes that there is enough material to produce a document, it will be presented at the Spring Plenary and request an extension of the Work Programme for 2023 or identify it as deliverable for the following year. Upon request the group will support the Market Monitoring WG on topics related to the impact of increasing energy costs.

## c) Other topics

The WG has identified other topics which are of interest for its members but cannot be addressed unless further resources are committed. Nonetheless, those topics may be studied in the following years.

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

## **STORAGE SIDINGS**

- 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 analyse if the storage routines of RUs are affected by charges. This paper was published by IRG Rail in 2018 for the first time.

## **PASSENGER STATIONS** (Both topics could be dealt with in a single document)

- 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.
- A report on charges on RUs' customer assistance services in stations (including lounges). 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 in 2021 and 2022, the 11<sup>th</sup> Market Monitoring report will depict and analyse the impacts of the Covid-19 pandemic on European rail market as well as the market recovery in 2021. Besides including all usual indicators, this report will also provide some complementary analyses of the impacts of the pandemic on monthly traffic and punctuality, financial indicators (TAC, revenues), and on different segments of the market (broken down by types of RU, PSO/non-PSO services, national/international services).

Additionally, the Working group will investigate 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). The draft document, which was about to be released by the end of the 2022 summer, has not yet been available for public consultation as of 19 Oct 2022. If the draft document is not released in November 2022, it is highly probable that the position paper project will be postponed until the beginning of 2023. The Working group will then 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.

Moreover, the Working group has been delegated by the Chair to participate in an ERA task force on rail data quality. Four members that represent the WG will attend meetings (between October 2022 and March 2023) and give frequent feedbacks about the progress of the task force.

For its 12<sup>th</sup> Report, the Working group decided to include a focus chapter on the heterogeneity of rail network usage across countries and its potential determinants, a subject that had been chosen for the focus in 2020 but postponed due to priorities given to Covid-19 analyses. The data collection template for this focus was distributed to members in July 2022 for comments and investigation of data availability. It asks for a wide range of information on the conditions of the network, traffic, and charges.

If resources allow, the Working group may study the intensity and impacts of the increasing energy costs on rail market players, especially railway undertakings, if appropriate, in cooperation with the SG Charges for Service Facilities in 2023.

## Deliverables

- Publication of the 11<sup>th</sup> Market Monitoring report in spring 2023, with analyses of the impacts of the Covid-19 pandemic on railway sector and the market recovery in 2021.
- Depending on the release date of the EC's revision of the (EU) 2015/1100 regulation and its contents, the Working group will collaborate with the ELP Working group to realize a position paper, if needs arise.

## 7 TASKFORCE ON MULTIMODALITY IN TRANSPORT

With the increasing relevance of multimodal transport, the taskforce was established in 2018 with the aim of addressing regulatory issues of interest for rail regulators. It has produced papers and case studies, most recently a document on *Mobility as a service* (2022).

### a) Multimodal digital mobility services

Building on the 2022 paper on MaaS (*Mobility as a service*) services in the UE, the task force shall continue its work on digital mobility services (DMS) in the EU with a focus on issues of interest for rail regulatory bodies.

The context of the TF's work will be framed by the approval of the Digital services Act, in 2022, and by the ongoing Commission's initiative on Multimodal digital mobility services.

The taskforce will consider, among others, data publishing obligations to be placed upon DMS managers and operators and the regulation of platforms, including the allocation of regulatory responsibility.

## Deliverables

- Paper to be released by 2023 – Q4 (November Plenary Assembly)

## ANNEX

### Working Groups and Sub-groups/Taskforce

	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	Virginia Silvestri
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
Taskforce on Multimodality		AMT	Clara Guerra
		ART-IT	Luisa Perrotti