

Independent Regulators' Group – Rail

Preliminary opinion on the European Commission's Track Access Charging Guidelines

October 2023

Mid 2023, the European Commission (EC) presented its first approaches to guidelines on Track Access Charges. The IRG-Rail working group charges analyzed the contents shared by the EC and gathered in the present preliminary opinion first common views thereon.

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1. Introduction

1. The European Commission (EC) announced its intention to issue guidelines on Track Access Charges (TAC) during the meeting of the Single European Railway Area Forum (SERAF) on 4 May 2023. In a meeting of IRG-Rail's working group Charges (WG) on 14 June 2023, DG MOVE's Vincenzo Carpinelli informed the WG about the EC's work on the guidelines and invited the Regulatory Bodies (RBs) to comment on the initial work carried out by the EC.
2. IRG-Rail welcomes the opportunity to share their views and experiences with the EC on this matter and to support the EC's work on the guidelines during their development. Once the guidelines are finalised and published by the EC, they will have an impact on the future work of regulators with regards to regulatory charging control.
3. IRG-Rail supports this initiative, which shall aim at improving the charging conditions for access to the European rail network and, therefore, contributing to the transition to the environmental sustainability of transport. In particular, however, it is important to ensure that the guidelines continue to safeguard the non-discriminatory access to rail infrastructure in Europe and efficient use of the network. RBs in IRG-Rail are willing to share their experiences with the aim to improve existing charging schemes and to boost rail services, especially those of international character, under equal, fair and non-discriminatory conditions.
4. This document provides IRG-Rail's preliminary opinion on the European Commission's initiative on Track Access Charges guidelines. It is IRG-Rail's response to the current status of the EC's proposed views as of June 2023. IRG-Rail is committed to continue and support the drafting process of these guidelines until their completion.

2. Guidelines on TAC: General remarks

5. TAC, as currently regulated at EU level by Directive 2012/34/EU ("the Directive") and Implementing Regulation (EU) 2015/909, together with Member State subsidies, form the financial basis for infrastructure managers (IM) in the EU. IRG-Rail believes that the charging components, as detailed in the aforementioned Directive and Regulation, are fundamentally based on sound economic principles. Each charging component serves a specific purpose and the proposed guidelines are an opportunity to clarify some elements of their implementation with a view to avoid market distortions. Upon designing TAC guidelines the EC must carefully assess and counteract market distortions.
6. In general, it is reasonable to assume that divergent high TAC may act as a disincentive to the development of rail transport, including new cross-border traffic. However, it is important to recognise that charges need to be levied to incentivise efficient use of infrastructure and to allow for cost recovery. A certain liberty to implement and to apply the Directive's charging rules is inherent and national specificities such as different financing regimes for IMs influence the charging level.
7. The guidelines should allow a certain level of flexibility to adapt the TAC structure with respect to national or to market segment specificities with a view to ensure an effective and optimal use of the network, without bias or discrimination. The guidelines should remain open to several solutions as appropriate, for

example, the frequently used Ramsey-Boiteux approach, which is implemented in many countries as well as other approaches, if adequate, such as two-part (binomial) tariffs.

3. Incentives to optimise use of capacity

8. As mentioned above, the basic rules of the TAC system, set out in the Directive, describe in detail the purpose of the different charging components that form the single TAC. They require the introduction of direct cost-based charges to cover the costs directly incurred by the operation of the rail services. Provided for an efficient utilisation of the railway infrastructure, direct cost charges should be set at marginal costs. In a natural monopoly, this solution will not cover the full costs. The purpose of mark-ups, where market segments can bear them, is to finance the part of the IM's costs which are not covered by direct costs or by government subsidies by exception. Where natural monopolies such as railway infrastructures exist, charges that cover the total cost of rail infrastructure provision may prohibit market access and therefore IMs need additional sources of funding to cover total costs. Mark-ups on direct cost based charges are designed to fill the gap for funding not provided by government subsidies but can only be applied if market segments can bear them.
9. Congestion charges and mark-ups are two TAC components with different purposes, regulated under Article 31(4) and Article 32(1) of the Directive. While congestion charges can be a suitable tool to allocate capacity in the case of congested infrastructure, however, mark-ups cannot. Mark-ups have the function of recovery of "full cost" incurred as stipulated in the Directive.
10. As stated in recital 71 of the Directive, it is necessary to "provide infrastructure managers with incentives to reduce costs and manage their infrastructure efficiently". These guidelines could support how this recital can be put into practice in an incentive-based approach to infrastructure management in terms of both cost and quality of service. For maintaining or even improving the quality of the infrastructure, the efficiency of the use of available funds could be improved (increased cost efficiency). Those evolutions would be in line with the objectives set out in the Directive for the development of railway services.

4. Mark-ups and market segmentation

11. Where mark-ups are applied to achieve cost recovery, it is essential that they are applied in a non-discriminatory manner and in line with the market-can-bear principle. This is to avoid market distortions and to ensure that market segments which can pay at least the cost that is directly incurred as a result of operating the railway service market segment are not excluded. For example, the frequently used approach of Ramsey-Boiteux pricing and the application of price elasticities to evaluate the impact of mark-ups on the demand of the relevant market segments aims at achieving an efficient non-direct cost allocation, ensuring non-discrimination and the minimum loss of welfare.
12. IRG-Rail believes that it is important to emphasize that market segmentation must be based on relevant data. TAC-guidelines could give non-binding recommendations and show examples of how the methodology and market analysis necessary for market segmentation could be done. It could also give advice on how to ensure the optimal competitiveness of rail market segments. It is understood that the definition of market segments should be based on the same principles, criteria and methods, to achieve

non-discriminatory results. The segmentation should reflect the relevant market conditions so that the pricing of mark-ups does not distort the functioning of the market. In this context, the availability of data is a prerequisite for correct analysis. If these conditions are not met, extensive segmentation in itself will not serve a relevant purpose.

13. Furthermore, it is important for the guidelines to consider how IMs can apply time limited discounts for charges on direct costs and mark-ups for new services (Article 33).

5. Facilitation of cross-border traffic

14. Ensuring a certain consistency between the charging systems of the various countries would foster the development of cross-border rail traffic. However, it should be clear in the guidelines that this objective can be effectively pursued through a sum of coordinated actions - spanning from the substantial improvement of interoperability and cross-acceptance of railway sub-systems and components, and the reduction of the "national rules" (except where they can be justified) - it would be important to examine different charging mechanisms and models (for example, the applicability of mechanisms applied in other regulated sectors such as "Calling Party Pays" as mentioned in the EC presentation) and to simulate the effects of their application, in order to verify that the internal consistency, fairness and non-discrimination of the overall charging system is preserved. It would be important to assess to what extent promotion of coordinated actions as foreseen by Article 37 of the Directive and the introduction of the one-stop shop provided for in Article 44 can be supported.
15. From IRG-Rail's point of view, reducing or waiving mark-ups to facilitate cross-border traffic comes with trade-offs. Any charges not collected would have to be recovered in another way. Charges not levied leave a gap to cover IM's costs. There is a risk that those gaps would be filled by charging other market segments meaning that other market segments, which could be active on domestic markets would be forced to bear additional financial burden.
16. For the development of cross-border rail transport, punctuality and reliability of the transport services are also crucial. It is thus important to further investigate criteria concerning the performance schemes, with a view to ensure a full interchangeability of information amongst the different national railway networks. IRG-Rail is happy to share the collective experience of implementing performance schemes across its members.
17. A further, but related point would be the provision of an adequately featured train information system for international cross-border services, which would provide harmonized real time information on traffic performance.