

Strategy Document 2017-2020

I. Preamble

IRG-Rail is the outcome of the voluntary commitment of independent national Regulatory Bodies, founded in 2011, to meet the need for international cooperation. As outlined in its Memorandum of Understanding, the group has been structured around mutual cooperation and pursues clear objectives to promote:

- a. a consistent approach to the European regulatory framework for railways by its members;
- b. the development of regulatory best practice in the railway sector in Europe both for freight and passenger rail transport;
- c. sustainable and effective competition in the provision of freight and passenger rail transport;
- d. the development of the European internal market in railways;
- e. the interests of passengers and freight users of its member countries;
- f. transparency in the railway sector.

Thanks to a fruitful platform of cooperation composed of diverse members, IRG-Rail has risen to the challenge and proven its effectiveness on enhancing regulatory practices and tools and getting a broad picture of current and upcoming issues.

Furthermore, IRG-Rail has experienced a significant growth in membership since its establishment in 2011 that has created further opportunities. Thanks to the heterogeneity of rail markets and Regulatory Bodies, each member has been able to benefit from this increased participation.

Since 2011, Regulatory Bodies have worked together to face current and future regulatory challenges in railways contributing to lay the groundwork on numerous issues. IRG-Rail has for instance helped to establish a consistent regulatory framework regarding the implementation of the Recast Directive 2012/34/EC. The group also contributed to the debate before the approval of the Fourth Railway Package, to pointing out at European level, with a single voice, some of its potential undesirable consequences and to suggest effective solutions.

Being aware of recent market developments, members decided in November 2016 to start discussing and reflecting on the strategic orientations and challenges that the transport environment in Europe is likely to face. Indeed, since 2011, the rail sector has gone through many changes at both national and European levels:

- The Recast has clarified existing rules and significantly strengthened Regulatory Bodies' powers and duties: it has introduced new obligations for the market players in terms of transparency and separation, and has set access and charging conditions for rail networks.
- Rail freight corridors have been operational since 2013 but have not yet resulted in the expected increase in rail traffic.
- The liberalization of international passenger services has taken place and with the adoption of the Fourth Railway Package, the opening of domestic passenger markets has now become law and is awaiting implementation. Some Member States have already decided to open their market to competition, while others have preserved the legal monopoly of their incumbent railway undertaking until now.
- Despite a more favorable legal environment, the rail market has moved forward only slightly with for example modest growth of freight traffic. Although trends tend to vary between Member States, the average modal share of rail has not increased as much as expected (since 2011, the rail modal share of inland transport market is on average 7.6% for passengers and 18% for freight¹); thus the modal shift foreseen by the European Commission and national transport policies has not yet been achieved.
- Digitalization has modified traditional market schemes, business models of transport operators and customers' behaviors, leading to significant changes.

These existing and upcoming changes are actually an opportunity for IRG-Rail to consider its further development. Since the setting up of IRG-Rail in 2011, a true "cooperation culture" between the Regulatory Bodies, based on independence and objectivity, has emerged. IRG-Rail is now a recognized and reliable partner for the stakeholders and its actions are regarded as such. This is also a reason why, in light of the ongoing changes, IRG-Rail must continuously adapt its strategy and its role.

Regulatory Bodies need to continue developing common approaches and understanding of the European legal framework and its application in order to support the development of the European internal market. This is why IRG-Rail will continue to focus on enhancing cooperation between its members and with rail stakeholders. IRG-Rail members will work on strategic orientations adjusted to major market developments, more end-users oriented and the evolving role of Regulatory Bodies.

¹ EUROSTAT indicators 2014: rail modal shares going from 0.9 % (Greece) to 17.3 % (Switzerland) for passenger markets and from 1 % (Ireland) to 48.5% for freight¹ (Switzerland) in 2014.

II. IRG-Rail's strategic objectives

Three main pillars have underpinned IRG-Rail's ambition since its creation:

- promoting a sustainable and effective competition in the rail sector,
- contributing to the development of an internal market,
- promoting the interests of passengers and freight customers.

These pillars are still relevant in light of current market developments in Europe. They require Regulatory Bodies to continue taking actions as the market undergoes transformations. IRG-Rail members will ensure that the objectives of this Strategy Document are consistently reflected in the working programs adopted every year by IRG-Rail Plenary Assembly.

The existence of a group such as IRG-Rail is extremely valuable as it allows its members to identify arising regulatory issues by sharing national cases and national practices. It is therefore a useful tool that can provide members with innovative solutions.

In addition, if IRG-Rail wants to provide the sector with clear views on the key challenges to come, it is crucial to think about what the market may be like in the mid and long term. Market players may have short/medium term plans as they need to quickly adapt to evolving market conditions and to the changing expectations of end-users. Regulatory Bodies have a role in looking ahead to provide a vision on the likely developments of the rail market and on the main challenges that can be anticipated from now on:

- Achievement of the liberalization of domestic rail passenger markets is clearly one of the most important challenges in the future. It will definitely change the structure of the railway market. The sector is provided with a legal framework. But, there are still obstacles to be handled prior to getting an effective open market. Regulatory Bodies must contribute to removing these last barriers to market entry and provide stakeholders and decision-makers with solutions.
- The progressive liberalization of the rail market should facilitate the growth of rail traffic across Europe, but it may also lead to more of cross-border issues. Although infrastructure managers are used to cooperating to manage these international services, issues will probably arise and require Regulatory Bodies to take action.
- Last and not the least, the reforms expected in the rail sector according to the European legal framework may result in profound changes in the role and actions of Regulatory Bodies. These are not easy to predict with certainty. Regulatory Bodies will therefore have to continue and adjust regulatory tools and working methods as necessary. IRG-Rail is the most appropriate structure to foster reflections on innovations to be introduced in regulatory practices in the rail sector at the European level.

First challenge: Facilitation of the opening of the domestic passengers markets to competition

The opening of all European passenger rail markets to competition is now imminent. IRG-Rail supported very clear positions on the effects to expect (e.g. single railway market, performance and quality improvements, increased social welfare) that are confirmed by positive evidence of the impact of competition in the German, Swedish, Dutch, Italian, Austrian or British markets for instance.

Nevertheless, although the Fourth Railway Package adopted at the end of 2016 represents a decisive step forward for the sector, its implementation remains to be ensured. In this regard, some key provisions are clearly open to interpretation and leave room for Member States to adopt measures which may jeopardize the opening up of the rail market to competition.

Since it is the role of Regulatory Bodies to enforce both European and national legislations, IRG-Rail could be a very useful tool for providing its members with relevant analyses and background on the way some rail domestic markets have opened up in Europe. As some members have already experienced competition in the rail market, their expertise and views can be valuable when working on the implementation of the European regulatory framework.

Ancillary issues related to the Fourth Railway package

IRG-Rail has identified additional issues which are key to facilitate the opening of the rail market. IRG-Rail is committed to the identification of the barriers to entry in the rail transport proposing pro-competitive solutions for passengers and freight markets.

Some of these barriers have already been tackled over the last years. One example is access to service facilities. Regardless of the potential transposition inconsistencies in national legislations, guaranteeing fair and non-discriminatory access to service facilities is crucial to permit new entrants to operate new services. IRG-Rail will continue to work towards consistent and common approaches on service facilities regulation based on the European regulatory framework.

Secondly, the European Commission has repeatedly called the Regulatory Bodies to contribute to the assessment of rolling stock market to be performed by the competent authorities. Although the rolling stock market is not regulated, limited access to this market may severely restrict access to the railway infrastructure for new entrants. IRG-Rail plans to carry out further work in this respect and focus on the barriers to entry in the rail transport market as well as possible ways for handling them on both passenger and freight markets.

With regard to public service contracts, the Regulatory Bodies' role within the exemptions regime to the competitive tendering principle is still to be defined. Regulation 2016/2007 amending Regulation 1370/2007 leaves room for Member States to determine who will assess the performance of the contracts falling under the exemptions regimes. In any case however, Regulatory Bodies still have the possibility to intervene as providers of expertise and to issue opinions on the legal reliability of such contracts and on the monitoring of their performance. Some members of IRG-Rail already monitor open markets. Their knowledge can help contributing to the work IRG-Rail is planning to carry out in reflecting on the necessary regulatory framework, monitoring in particular the performance indicators that the competent authorities will have to introduce into their directly awarded contracts.

Based on this IRG-Rail could contribute to the application of this upcoming new procedure by delivering its considerations and regulatory expertise e.g. participating in the assessment and monitoring of performance indicators.

Handling of remaining physical and technical barriers

The establishment of the Single European market is still a long way off. In addition to legal and economic problems, technical barriers also need to be handled. The European Union Agency for Railways (ERA) was given the competences to progressively withdraw technical barriers from the market and infrastructure managers have a key role to play as well.

Since technical barriers may prevent the development of traffic or impede current railway services, and thus affect the economic sustainability of the rail sector, it is crucial that Regulatory Bodies report on their economic impacts on the markets. They should therefore take them into consideration while controlling and monitoring the rail market. To this end, Regulatory Bodies and authorities entitled to tackle technical issues have to discuss on the remaining technical constraints that may be a barrier to entry in the transport market.

IRG-Rail intends to work closely with the European Agency for Railways (ERA) with a view to developing complementary approaches on network related issues. This work will aim at providing IRG-Rail and ERA with the materials they need to better assess the obstacles impeding the development of the Single European Railway Market.

Second challenge: Regulation of cross-border issues

Potential emergence of cross-border disputes

With the increase of mobility within Europe and the opening up of domestic markets to competition, cross-border issues are likely to be more frequent. It is therefore necessary for Regulatory Bodies to provide a consistent and predictable scope of action especially regarding conflicting situations. Cooperation between infrastructure managers is necessary and Regulatory Bodies can foster this dialogue while monitoring national networks.

It is up to Regulatory Bodies to build up the necessary tools and mechanisms enabling them to handle potential cross-border related cases. It is also their role to monitor more closely the situations at cross-border and to evaluate which actions are required. To do so, IRG-Rail will provide input to the European Commission's work on cooperation between Regulatory Bodies in order to foster international cooperation and to facilitate the handling of emerging cross-border issues.

Toward a more efficient functioning of the rail freight corridors

Rail Freight Corridors aim to facilitate international transportation of goods across Europe. Although the infrastructure managers have tried to their improve efficiency, traffic remains limited. This raises the question of how to make this tool effective and set the role of Regulatory Bodies accordingly. There are initiatives undertaken by the sector to improve the use and functioning of Rail Freight Corridors. Regulatory Bodies must take part in these processes.

For instance, this implies starting to reinforce control over the corridors and especially with regard to pre-arranged paths so as to ensure a fair, transparent and non-discriminatory access to "corridor paths", allocation processes and operation of the Rail Freight Corridors.

Regulatory Bodies have set up cooperation agreements designed for monitoring corridors and handling potential complaints coming from market players. The traffic growth expected on these corridors as they develop in time, may lead Regulatory Bodies to adjust these cooperation mechanisms to address new issues.

Nevertheless, Regulatory Bodies have so far acknowledged their limited experience on international services regulation. In order to regulate cross-border services properly, IRG-Rail will be working on obtaining a better understanding of the reasons why the modal shift from road to rail remains limited. IRG-Rail is therefore planning to provide the sector with an in-depth analysis of the limited traffic for international services.

Third challenge: Developing new regulatory tools and methods

The objective of regulation is to ensure fair and non-discriminatory access to markets with failures and to provide market players with a consistent and predictable framework which takes domestic specificities into consideration.

Facing an evolving European railway environment, Regulatory Bodies will have to cope with new challenges and explore different ways to provide market players with a balanced regulatory framework, stimulating competition. In this respect, IRG-Rail may become a “laboratory” where Regulatory Bodies reflect on tools and solutions. Innovative approaches may also be inspired by regulatory practices in other sectors.

Innovative regulatory tools such as data-driven regulation/crowd sourcing and sunshine regulation exist and are used by other sectorial groups and IRG-Rail aims at becoming the platform for rail Regulatory Bodies to consider whether such innovations could be of interest for their activities. It is an opportunity that all members could benefit from as it may contribute to improve regulatory practices.

Therefore, IRG-Rail will monitor the competitiveness of railway markets across Europe, proposing new regulatory approaches in case competitive bottlenecks persist after the implementation of new railway package, preventing effective competition. For instance, rail Regulatory Bodies could look at other network industries such as telecoms where the European Union framework has allowed regulators to introduce different level of duties on stakeholders depending on their market positions. The European rail market being composed of numerous monopolies or undertakings holding significant market power, it may be useful to consider whether such differentiated approaches to rail regulation are appropriate. If so, IRG-Rail could reflect on a contribution to a methodology and an assessment of market positions.

Regarding the tendering of public service contracts, tools provided for by the Recast already exist and are sometimes already used by some Regulatory Bodies (economic equilibrium test, compensation mechanisms). IRG-Rail therefore plans to continue and exchange best practice with a view to enabling IRG-Rail members to learn from some each other’s experience on the implementation of such tools and, if necessary, think collectively about ways to apply them.

It is acknowledged that efficiency gaps exist in the rail sector, in terms of asset utilization, staff productivity or cost/revenue ratios on both upstream and downstream markets. Regulatory Bodies should seek to understand the reasons for these efficiency gaps and provide the decision-makers

with relevant solutions to reduce them. Furthermore with ongoing pressure to reduce cost whilst improving the performance and quality of rail services and expanding networks' capacity, efficiency of costs is a key challenge for markets players. IRG-Rail would be the ideal platform to reflect on the way to assess costs efficiency with a view to identifying current weaknesses and tackling new challenges.

Market/end consumers orientation

It is crucial for IRG-Rail to break down the "technical thinking only" mindset of the railway sector to be able to induce a cultural change within the sector. So far, IRG-Rail has been mainly focused on issues related to upstream markets, i.e. relations between infrastructure managers, service facilities operators and railway undertakings, as the railway environment required such crucial analyses. A more demand-oriented approach, taking into account quality of service, passengers and carriers' welfare, is complementary and should be developed. Especially with the opening up of domestic markets to competition, it becomes critical for IRG-Rail to evaluate the benefits and/or damages for end-users.

Multimodal orientation

The rail sector has already entered the digitalization path which concerns all the actors throughout the value chain, from end users and railway undertakings, to infrastructure managers or rolling stock suppliers.

With the emerging forms of communication, consumers' expectations are significantly changing. New technologies have created new possibilities in the access to the transport market. Since clients are provided with means to challenge every mode of transport and choose the most suitable alternative to their needs, intermodal competition has increased.

Furthermore, digitalization has enabled to interconnect more easily transport markets. Indeed, multimodal journey planning and ticketing, door-to-door services, train-sharing apps have spread and transformed the business model of transport service providers. For instance, some incumbent railway undertakings have taken strategic positions in this market and have developed multimodal solutions. Although such diversification may benefit end-users in the short-run, there may be undesirable effects in the longer-run as railway undertakings could benefit from the leverage of holding a dominant position on the closely related-markets.

The digital platforms as well as the emergence of new multimodal market players should drive the Regulatory Bodies to develop expertise and tools to efficiently monitor both passengers and freight rail markets. In a context of "the year of multimodality" that the European Commission is planning to launch in 2018, the Regulatory Bodies initiatives will be welcome by the sector.

III. Dealing with regulatory challenges

Regulatory Bodies actions are guided by two pre-requisites: to anticipate as well as to provide objective, data-based and experience-based analyses. Being proactive has always been among IRG-Rail's objectives. What is expected from Regulatory Bodies is to monitor markets, provide a prospective view on their potential developments and contribute to enlightening the public debate on rail related issues.

To this end, Regulatory Bodies should anticipate as far as possible issues and needs of the market, in order to develop robust regulatory frameworks. IRG-Rail is driven by the willingness to provide decision-makers and market players with clear views on what works and what does not work in the market. Regulatory bodies have to state what complies or not with the European and national legal framework, what is aligned with the proper functioning of the market or not. To make Regulatory Bodies' opinions relevant and reliable, their analyses must be based on facts and evidence.

IRG-Rail will continue to develop towards a well-informed expert forum for discussion with regular and relevant exchanges of information and experience, contributing to and increasing the Regulatory Bodies' expertise in monitoring markets as well as their knowledge of the different European markets. IRG-Rail will besides continue to deliver evidence and data based position papers reflecting common analysis of members in order to achieve a consistent application of regulatory tools across its members.

Data/evidence/experience based contributions

IRG-Rail and national Regulatory Bodies have been collecting data concurrently with the European Commission Market Monitoring group (RMMS) and Eurostat. As stated from the very beginning of IRG-Rail, data collection performed by IRG-Rail has to be complementary and interactive. This objective remains and IRG-Rail will contribute together with the European Commission to make rail data consistent and limit duplication in data collection.

IRG-Rail could also develop cooperation with other authorities using data from organizations such as national safety authorities and the European Union Agency for Railways with a view to sharing data and combining both technical and economic approaches aiming at getting a broader picture of the rail sector.

Flexible working processes

Given the railway environment, expected to be in constant evolution as well as the limited resources of IRG-Rail, a new working organization could new working methods such as task forces, temporary working groups or focus groups to work on specific regulatory areas and better use of electronic tools.

Providing flexibility to the daily work of IRG-Rail would enable members to organize themselves more easily when faced by cross-cutting issues or European related-issues which may concern a limited number of members in the short-run.

Cooperation with other networks and other sectoral regulators

The European Network of Rail Regulatory Bodies is a useful platform which enables Regulatory Bodies to work on effective solutions with the European Commission. It is the main interface between Regulatory Bodies and the European Commission for addressing rail-related issues and

European railway public policies. IRG-Rail is the platform aiming at facilitating Regulatory Bodies' daily work by sharing practices and experiences, enhancing analyses and building up cooperation oriented toward a more consistent regulation across Europe. This network and IRG-Rail could therefore work in a more complementary manner. IRG-Rail is led by the ambition to better regulate the rail sector every day. One way to enhance the expertise of members is to make the analyses consistent with those of national competition authorities as well as other sectoral regulators. Economic regulation can be considered as a whole and the decisions issued by the rail regulators should be taken and looked at in the light of the potential impacts on the rail market. To this end, cooperation with national competition authorities as well as with other sectoral regulators would be profitable for IRG-Rail members.

The years to come will be critical for the European rail market. The tools provided by the European legal framework will hopefully enable the actors to overcome the remaining technical and political obstacles to the liberalization of the market. The Regulatory Bodies will have a key part to play in future developments.

In this regard, the Regulatory Bodies will take action to foster initiatives aiming at making the rail sector more efficient and more consumer-oriented and ensure that players are able to meet market expectations in a non-discriminatory and transparent manner.