

**Independent Regulators' Group – Rail**

**IRG-Rail**

**Charges Working Group**

**Position paper**

**Initial approach to capacity charging**

**Plenary Meeting**

**19-20 November 2014**

### Executive summary

IRG-Rail considers it important that **appropriate** and **transparent charging practices** are implemented with respect to capacity constraints. This paper addresses **charging for scarcity of capacity when the network has been declared congested in accordance with Article 47.1 of Directive 2012/34/EU and the infrastructure manager intends to levy a charge under Article 31.4 of the Directive**. This provision gives the possibility to raise scarcity charges, but does not explain their design. IRG-Rail assumes that:

- Congested infrastructure is considered to comprise the **rejection of train paths**, either outright (where the requested path is not available) or where the available infrastructure capacity is such that any further capacity supply would lead to the **deterioration of operational quality to a non-appropriate level**.
- The calculation of a charge for scarcity of capacity only takes into consideration **the opportunity costs** due to the declared congestion.

## I. Introduction

1. IRG-Rail supports the view that a major issue in rail transport policies is to set infrastructure charges which promote an **efficient use of the infrastructure** through the design of appropriate pricing systems. In particular, IRG-Rail considers it important that appropriate and transparent charging practices are implemented with respect to capacity constraints. For that purpose, IRG-Rail wishes to express its view on these issues in this paper.
2. This paper sets out IRG-Rail's view in cases where the network has been declared congested under the provisions of Article 47 and paragraph 4 of Article 31 of Directive 2012/34/EU.

## II. Definitions and guidelines for charging

3. **Definition.** The wording differences between the existing translations of the Directive 2012/34/EU give rise to difficulties as regards the implementation of scarcity charging. Details regarding those differences are provided in the Annex.
4. According to Article 3(20) of Directive 2012/34/EU "*congested infrastructure*" refers only to a **section of infrastructure** for which **demand for infrastructure capacity cannot be fully satisfied** during certain periods even after coordination of the different requests for capacity.

## IRG-Rail (14) 16

5. A charge which reflects the scarcity of capacity of the identifiable section of infrastructure during periods of congestion could therefore be used where, after a coordination process, demand for rail infrastructure usage cannot be satisfied adequately and **track requests**, therefore, **have to be rejected** or **cannot be offered at an appropriate quality** by the infrastructure manager. In other words, scarcity of capacity on the rail network could arise from the inability of a train operator to get the path it requests, in terms of departure time, stopping pattern or operational quality.<sup>1</sup> These are the only circumstances in which a charge can be levied charge in accordance with Article 31.4 of Directive 2012/34/EU.
6. **Charging for capacity constraints.** Directive 2012/34/EU states that the basic charges shall be set at direct costs and that it may include a charge which reflects scarcity costs.
7. IRG-Rail considers that the calculation of the charge which reflects scarcity of capacity on a part of the network which has been declared congested should take into consideration the **opportunity costs due to the scarce capacity**. This charge should not exceed the estimated opportunity costs.
8. Article 31.4 of Directive 2012/34/EU does not explain how charges which reflect the scarcity of capacity of the identifiable section of infrastructure during periods of congestion have to be designed. It only states the following:
  - the infrastructure manager can levy charges for the case of scarcity of capacity;
  - the charge has to reflect the scarcity of capacity;
  - the charge is only to be levied for an identifiable segment of infrastructure;
  - the charge is restricted to periods of congestion.
9. Where, after coordination of the requested train paths and consultation with applicants, it is not possible to satisfy requests for infrastructure capacity adequately, the infrastructure manager shall declare this section of infrastructure as being congested and the procedure set out in Article 47<sup>2</sup> has to be implemented.

### III. Conclusions

10. IRG-Rail considers that charges reflecting the scarcity of capacity could play an important role in promoting better use of network capacity. However, in order to develop and design such charges, more work is needed.
11. A “congested”, “scarce” and “saturated” infrastructure refers, under the framework of Article 47 of Directive 2012/34/EU, to the inability for a railway undertaking to get the paths it requests or to get the paths of a sufficient operational quality level. IRG-Rail supports the view that scarcity costs should be interpreted as the opportunity costs due to the congested infrastructure.

---

<sup>1</sup> The deterioration of operational quality could be measured in secondary delay minutes. From a distinct threshold of secondary delay minutes on a train path cannot be supplied in an adequate quality.

<sup>2</sup> “Where, after coordination of the requested train paths and consultation with applicants, it is not possible to satisfy requests for infrastructure capacity adequately, the infrastructure manager shall immediately declare that section of infrastructure on which this has occurred to be congested. This shall also be done for infrastructure which can be expected to suffer from insufficient capacity in the near future.”

12. IRG-Rail considers that there is **no simple way to design charges to reflect scarcity of capacity**. The estimation of opportunity costs relies necessarily on complex estimating methods while associated information requirements are stringent. In addition, Directive 2012/34/EU does not provide precise guidelines with respect to designing such a charge.
13. As a consequence, in most European countries, designing proper scarcity charges may not be realistic in the short term. In this situation, a first but necessary step is to **increase transparency on capacity problems in the network**.

## Annex: Linguistic differences within Directive 2012/34/EU

### Directive 2012/34/EU – Article 31.4 and Article 3 Nr. 20

- **English:**
  - Article 31.4: *“The infrastructure charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during **periods of congestion**”*
  - Article 3 (20): *“congested infrastructure means an element of infrastructure for which demand for infrastructure capacity cannot be fully satisfied during certain periods even after coordination of the different requests for capacity”*
- **French:**
  - Article 31.4: *“La redevance d'utilisation de l'infrastructure peut inclure une redevance au titre de la rareté des capacités de la section identifiable de l'infrastructure pendant les **périodes de saturation**”*
  - Article 3 (20): *“infrastructure saturée”, un élément de l'infrastructure pour lequel les demandes de capacités de l'infrastructure ne peuvent être totalement satisfaites pendant certaines périodes, même après coordination des différentes demandes de réservation de capacités”*
- **German:**
  - Article 31.4 *“Das Wegeentgelt kann einen Entgeltbestandteil umfassen, der die Knappheit der Fahrwegkapazität auf dem bestimmbaren Fahrwegabschnitt in **Zeiten der Überlastung** widerspiegelt”*
  - Article 3 (20): *„überlastete Fahrwege“ einen Fahrwegteil, auf dem der Nachfrage nach Fahrwegkapazität auch nach Koordinierung der verschiedenen Anträge auf Zuweisung von Fahrwegkapazität während bestimmter Zeitabschnitte nicht vollständig entsprochen werden kann”*

While in the English and the German versions this situation is understood as “congestion”, the French version clearly refers to “scarcity” (i.e. “saturation” in French) and not “congestion”. Due to the normative reference to Article 3 Nr. 20 the difference is reduced. It is made clear, that – whether referred to “scarcity”, “saturation” or “congestion” – the definition depends based upon “a period, in which the demand for infrastructure cannot be fully (“totale-ment”, “vollständig”) satisfied”. It is to be noted that “fully” is a vague legal term, which needs to be further determined.