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Independent Regulators' Group – Rail

IRG–Rail

Position Paper

**on the European Commission's Proposals
for a Fourth Railway Package**

24 April 2013

I. Introduction

1. On 30 January 2013 the European Commission published its 4th Railway Package¹. This comprehensive package addresses the following topics:
 - the opening of the market for domestic passenger transport services by rail,
 - a structural reform and improvements in governance of the railway infrastructure,
 - further harmonisation with regard to interoperability, railway safety and the role of the European Rail Agency.
2. The publication of the final proposals was preceded in 2012 by intensive discussion and consultation with rail stakeholders. IRG-Rail closely monitored this process and published a position paper in October 2012².
3. That paper outlined the initial views of IRG-Rail members, in particular:
 - IRG-Rail welcomed the effort to improve competition in the EU rail industry through market opening, assisted by strong, independent regulation and accompanied by some key framework conditions, thus contributing to increased quantity and better quality of passenger and freight services.
 - IRG-Rail welcomed competitive tendering as the general rule for awarding public service contracts, and favoured legislation requiring rolling stock availability not to be a barrier to market entry.
 - IRG-Rail welcomed provisions to improve access to rail-related services, in particular ticketing and marketing or promotional activities.

¹ The Commission proposes to amend the following legal instruments:

- Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a Single European Railway Area (Recast) as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure;
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 concerning the opening of the market for domestic passenger transport services by rail ;
- Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 on the European Union Agency for Railways;
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways;
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the European Union;
- The Commission suggests further to repeal Regulation (EEC) 1192/69 on common rules for the normalisation of the accounts of railway undertakings.

² IRG-Rail (12) 2 rev1; IRG-Rail (12) 2a published 24th October 2012

- IRG-Rail also favoured clearer definition and specification of the essential functions of infrastructure managers and a further separation and independence from railway undertakings' functions. With regard to the essential role of Regulatory Bodies in securing transparency and a level-playing field, IRG-Rail stressed the need for full regulatory supervision of any separation requirements.
 - IRG-Rail supported stronger cooperation between national safety authorities, acceleration of cross-acceptance of national legislation and an appropriate harmonisation of safety rules, avoiding over-prescriptive requirements. This was likely to promote further opening of the railway market and an enhanced competitive environment.
 - IRG-Rail outlined, however, that it was important to ensure that proposals were flexible and did not create unjustified cost and bureaucracy for the rail industry. Especially with regard to the opening of the domestic passenger market, IRG-Rail stressed the importance of synergies to ensure that benefits of a whole system approach to operations were retained. IRG-Rail recommended no one-size-fits-all approach to market opening or access to rolling stock, but the choice of different options depending on specific national conditions.
4. This position paper builds on IRG-Rail's initial views and aims to address the objectives and concrete legislative proposals of the package from a practical regulatory perspective.

II. Overall objectives of the 4th Railway package and general remarks

5. This paper focuses on the regulatory impact of the proposed measures on the day-to-day work of IRG-Rail members, and presents their views with respect to their individual responsibilities, not necessarily reflecting all individual policy positions at national level.
6. The overall aim of the 4th Railway Package is to create a fully competitive and sustainable Single European Railway Area, to the benefit of customers, businesses and the environment. The Commission proposes to take action towards "a joined up infrastructure" and "a real internal market". To achieve that, the proposed 4th Package suggests action in the following three main areas:
- **Standards and approvals that work:** Trains and rolling stock should be built to a single standard and certified once in order to save time and money. There should be only a single safety certificate for rail companies allowing them to operate European-wide.
 - **A structure that delivers:** Infrastructure managers should be strengthened and the functions of managing the network (including traffic management) and running the trains should be kept separate to ensure that the rail network is run efficiently and in a non-discriminatory manner.

- **Fully open markets that provide better quality and better choice:** domestic passenger markets should be opened up to new entrants and services in order to encourage innovation and efficiency.
7. IRG-Rail fully supports the Commission's holistic approach in the package which addresses at the same time the relatively low level of competition, remaining market distortions and suboptimal structures by introducing mutually supportive initiatives on different aspects of rail and other legislation.
 8. IRG-Rail welcomes in particular the objective of the 4th Package to open the domestic rail market, as this is a major step towards a competitive, efficient and sustainable single rail market in Europe. The chosen holistic approach with different proposed measures can achieve synergies and therefore create a more efficient, competitive and customer-responsive railway sector.
 9. Nevertheless, IRG-Rail has some reservations about several aspects of the proposals, as detailed in this paper, which also highlights some areas where more clarity is required.
 10. Acknowledging the fact that the package touches upon a variety of different fields of law (like public procurement law or labour law) as well as the responsibilities of different national authorities.
 11. As already pointed out in its first position paper, IRG-Rail is convinced that market opening can be successful only with robust regulatory oversight and a set of clear framework conditions such as non-discriminatory access to infrastructure, stations, train path allocation, traffic management and suitable rolling stock. To create a well-functioning competitive single rail market in Europe IRG-Rail believes that it is necessary to eliminate the remaining legal, structural, and technical barriers to market-entry. It is also essential to preserve the benefits of an integrated network of services and ensure a level playing field to promote a well-functioning rail market. Some of these framework conditions will be addressed through the proposals related to the opening of the domestic passenger market, others via the proposal on infrastructure governance and the technical part of the package.
 12. IRG-Rail believes that it is crucial to find the right balance between legal clarity and detail on one hand, and discretion or sufficient regulatory flexibility on the other. Therefore IRG-Rail welcomes explicitly the flexible approach the European Commission has chosen with regard to different aspects of the opening of the domestic passenger market (for example; the model of open access, access to rolling stock, ticketing). This will leave sufficient room for maneuver for suitable national solutions, that take into account different national structures. We note however, that for market opening to be successful, it is important to ensure that implementation respects the level playing field and that countries open their domestic passenger markets as soon as possible, in accordance with relevant legislation.
 13. IRG-Rail believes that a transparent and clear legal framework is vital for liberalised markets and the development of open access operators. To be successful, market opening of the passenger market must be accompanied and supported by robust and independent regulation. The main priority is to ensure that access to the market is non-discriminatory and transparent, in particular with relation to the criteria for capacity allocation. A level

playing-field will encourage investment and innovation, allowing customers to benefit from better services.

III. Part I: Opening of domestic passenger markets

14. IRG-Rail strongly supports market opening in the domestic passenger transport markets. As shown in the evidence gathered by the European Commission, the European rail transport markets are not as open as they could be. The proposed opening of the domestic rail passenger market could benefit European passengers, funders, and rail operators. It would be one step closer to the creation of a full single European railway area, more responsive to customer needs, with improvements in efficiency, performance and growth.

1. Open Access

Details of market opening

15. Liberalisation can take different forms, with a differing balance between competitive tendering for public service contracts and open-access arrangements. Member State rail networks are diverse in size, structure, and technical specification. IRG-Rail welcomes that the 4th Railway Package allows for these differences, and provides Member States sufficient flexibility, whilst maintaining a level playing field, as to how the benefits of competition in the domestic rail market can be most effectively realised.
16. The model to be chosen for liberalisation of domestic passenger market has to be considered carefully, especially with regard to any possible impact on existing contracts as in Member States where open access is already in place, it is important that competitive conditions are preserved.

Competitive tendering and public transport plans

17. The package introduces mandatory competitive tendering for the award of public service contracts of a certain size. IRG-Rail welcomes this proposal as a general rule.
18. Competitive tendering of public service contracts for rail already exists in some Member States. Their experience indicates that the pressure of competition can create incentives for bidders to offer improvements in efficiency, performance and quality of rail services. It may also reduce costs, and maximise efficiency of public spending as public authorities are offered value for money, promoting innovation and improving passenger benefits.
19. A well designed competitive bidding process should promote the participation of different railway undertakings and help to ensure the optimal value for customers and public transport authorities. The success of the competition for the market will depend on the quality, organisation and design of the bidding process, and how attractive the proposal is to bidders (for instance, clear valuation criteria, quality standards).
20. To ensure a level playing field with full visibility, IRG-Rail would also recommend that the Commission takes the necessary measures to ensure that further information on the tendering and award of rail public service contracts is recorded and published at the European level, in accordance with existing EU public procurement legislation.

21. Regarding public transport plans, the package provides for a flexible but formalised procedure for defining public service obligations and the geographical scope of public service contracts³. IRG-Rail generally welcomes this: a transparent process, involving all interested parties, will help to ensure the benefits of competition. IRG-Rail also supports the creation of common rules on the award of public service contracts in order to ensure that the characteristics of those contracts meet such principles of appropriateness, necessity, proportionality and cost-efficiency.
22. Therefore, IRG-Rail supports the provision⁴ that would allow competent authorities to limit the number of contracts to be awarded to the same railway undertaking following a competitive tendering procedure. This safeguard will allow competent authorities to introduce competition in rail markets and not depend on dominant undertakings. However, to avoid the creation of additional barriers to market entry, further clarity will be required on the circumstances under which such limitations may be applied.
23. We understand the concept of a maximum size⁵ for Public Service Contracts. Nevertheless flexibility and proportionality are required to reflect the size of the network, communities and the country to be served, as well as transport flows. Very large contracts - for example covering most passenger services within a Member State - would clearly reduce competition and would only attract dominant railway undertakings such as the historical operator.
24. It is also important that the proposals on thresholds for direct awards take into account the benefit of tendering, and provide for the best outcome for funders and users.

Role of Regulatory Bodies

25. The package introduces a new role for Regulatory Bodies. Concretely, the Regulatory Body is required to assess a competent authority's compliance with a set of criteria for public transport plans, ensuring that they are proportionate, appropriate, and not deterrent to potential market-entrants⁶. IRG-Rail believes Regulatory Bodies could bring their expertise to bear, and welcomes this separate regulatory oversight process.
26. We acknowledge that the procurement of public service contracts does not fall within the competences and duties of Regulatory Bodies, but we recognise the important role of Regulatory Bodies in ensuring non-discriminatory access to the market and transparency of rules. However we would stress that these new regulatory functions must take into account constitutional and administrative structures that may exist at national level. In some countries, current constitutional arrangements would not permit the Regulatory Body to oversee regional tendering authorities.

³ Proposal amending Regulation EC No 1370/2007 – new article 2a.

⁴ Proposal amending Regulation EC No 1370/2007 – article 5, para 4(b).

⁵ Proposal amending Regulation EC 1370/2207, article 2a, para 6(b)

⁶ Proposal amending Regulation EC No 1370/2007, article 21, para 6(a)

27. In addition, we are concerned that neither the package nor existing legislation appear to provide any measure to ensure proper enforcement. Such powers would need to be detailed in the amended regulation.
28. If applicable, Regulatory Bodies will also be asked to assess whether the economic equilibrium of a public service contract is compromised by the introduction of a new open-access rail passenger service. IRG- Rail welcomes this role, already foreseen in the case of international passenger services, as well as the high degree of transparency, clear timescales and legal certainty provided under the proposal.
29. However it should be made clear that the requirement for an applicant to notify a request for infrastructure capacity for rail passenger services no less than 18 months before the start of the working timetable ⁷ should only apply in a Member State that has implemented the (optional) economic equilibrium test into national law. Furthermore IRG-Rail has some concerns about the potential impact of such a timescale on ad-hoc requests for capacity. In order to allow such ad-hoc rail passenger traffic, the provision should clearly refer only to traffic in the timetable prepared annually by the infrastructure manager. Furthermore, timescales for capacity allocation should be determined in such a way that deliberately obstructive behaviour in capacity request is prevented.

2. Information and integrated ticketing scheme

30. The package ensures that Member States have the possibility to establish information services and integrated ticketing schemes common to all railway undertakings operating domestic passenger services⁸, which must not distort competition. IRG-Rail welcomes that the European Commission has chosen an open and flexible approach that foresees national discretion and allows for market-driven solutions. However, clarification of the scope and what is meant by "information" and "ticketing scheme" is necessary, in particular whether this is strictly limited to the establishment of one single nationwide information service and integrated ticketing scheme. In order to allow flexibility for preserving network benefits for passengers the proposal should be redrafted and ask for the establishment, for instance at national or regional level , of "common information services and/or ticketing schemes including integrated schemes for the supply of tickets, through tickets and reservations".
31. IRG-Rail sees it as essential that these arrangements should be subject to regulatory oversight to prevent discrimination between (potential) operators. To guarantee a successful European rail transport market, operators may not be unduly dependent on competitors for rail related services. However, if supervision of the level playing field is supposed to be assigned to the Regulatory Body a corresponding provision should be inserted in the relevant European legislation.

3. Access to rolling stock

32. In its paper published in October, IRG- Rail outlined the importance of addressing the issue of access to rolling stock, which is a barrier to entry for new entrants. IRG-Rail welcomes that the 4th Railway Package proposal requires Member States to ensure

⁷ Proposal amending Directive 2012/34/EU –article 3 para 4

⁸ Proposal amending Directive 2012/34/EU – article 1.7 –article 13a, para 1

effective access to suitable rolling stock for rail passenger services⁹, without prescribing a specific approach but recognising that different practicable solutions may be appropriate to suit the needs of different markets. Regulatory Bodies should exercise their monitoring powers to ensure that issues of concern are identified, and that access to rolling stock does not present a barrier.

33. IRG-Rail would strongly support that Member States study their rolling stock market and have measures for rolling stock ready and published before 2019. This would increase transparency of the state of play of the rolling stock market.

IV. Part II: Infrastructure governance

1. General Remarks

34. IRG-Rail supports the widening and clarification of the functions of infrastructure managers and welcomes the intended strengthening of infrastructure manager independence and safeguards in this respect.
35. According to the Commission's evidence and the experience of some regulators, the existing degree of separation in some Member States does not fully prevent conflicts of interest.
36. The Commission's proposals are therefore to introduce an institutional separation of infrastructure management and transport operation as the simplest and most efficient solution to create a level playing field among transport operators. However the package foresees an exception for those Member States that are maintaining vertically integrated structures. It allows such structures only if separation safeguards (Chinese walls and prevention of cross-subsidy) are implemented, and provides for a verification procedure by the Commission to ensure the independence of the infrastructure manager.
37. IRG-Rail considers structural reform to be a necessary and important step towards ensuring that the network is run efficiently and in a non-discriminatory manner. Some Regulatory Bodies favour very far-reaching measures in this respect. However, in the light of the extensive and lengthy discussions of this topic at several levels and in various sectors, including amongst Regulatory Bodies, IRG-Rail follows a pragmatic rather than dogmatic approach. Thus, this paper does not express any position on the merit or validity of the exception foreseen by the Commission, and we will focus for the time being on ensuring a level playing field, dependent upon transparent financing, impartial infrastructure management, and non-discrimination.
38. Strong and independent Regulatory Bodies are a prerequisite for any opening of the market. Therefore independent Regulatory Bodies should supervise these areas, whatever degree of separation is chosen by Member States. They must have sufficient resources and powers to tackle any barriers to market-entry. Powers to be assigned to

⁹ Proposal amending Regulation EC No 1370/2007 – article 5a

the Regulatory Bodies in order to fulfil this task will depend on the chosen structural approach, and the need to reflect the degree of vertical integration.

2. Definitions and scope of institutional separation

39. IRG-Rail considers it important to have precise legal definitions in order to secure legal certainty and to avoid misinterpretation and subsequent litigation. This is crucial as the definitions determine the scope of these provisions and therefore build the basis for any proper implementation by Member States and enforcement by the Regulatory Bodies.
40. As outlined in IRG-Rail's previous position paper, we are in favour of clearer definition and specification of the functions of infrastructure managers. Thus IRG-Rail welcomes the proposal to define all relevant functions of the infrastructure manager. Such functions must be performed by the infrastructure manager in a consistent, non-discriminatory manner.
41. Whilst we support imposing the separation and governance obligations¹⁰ under the package on "large" and mainline infrastructure managers, we would recommend following a proportionate approach for "smaller" infrastructure providers in order to mitigate administrative and financial burdens. For instance, legislation on separation requirements in the energy sector¹¹ distinguishes between stricter obligations for large and less intrusive requirements for small companies.
42. As so much depends upon it, clarification is needed with regard to the definition of "vertically integrated undertaking". IRG-Rail observes that the proposed definition is not consistent with the legal definition of "vertically integrated undertaking" in Directive 2009/72/EC¹² and in Directive 2009/73/EC¹³ that focus both on the control and the different functions of the vertically integrated undertaking instead of focussing on the full or part ownership. Further guidance of what is meant by "partly owned"¹⁴ would be needed with regard to complex financial ownership models.

¹⁰ Proposal amending Directive 2012/34/EU– article 7

¹¹ Directives 2009/72/EC and 2009/73/EC.

¹² Article 2 (21) of Directive 2009/72/EC reads "*vertically integrated undertaking*' means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity"

¹³ Article 2 (20) of Directive 2009/73/EC reads: "*vertically integrated undertaking*' means a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas".

¹⁴ Proposal amending Directive 2012/34/EU – article 3, para 1(c) –point 31

43. IRG-Rail calls for clarification on the economic independence of infrastructure managers in vertically integrated undertakings. The term “ultimate owner”¹⁵ is neither defined in the current draft, nor is it used or defined in other legislation. A clarification is necessary, especially regarding infrastructure managers with complex ownership structures and / or infrastructure managers owned by vertically integrated undertakings, which are owned in turn by another company or by government.
44. Moreover, in order to ensure legal certainty, precise definitions of various abstract legal terms such as “directly or indirectly exercise control”, “exercise any right” or “hold any financial interest” are needed. The definition of the legal term “directly or indirectly exercise control” appears to be taken from the Council Regulation (EC) No 139/2004 on the control of concentration between undertakings (the EC Merger Regulation) and is already well defined in ECJ case law. However this should be taken up explicitly in the definition part of the Directive.
45. Furthermore, we recommend including a precise definition of the term “hold any financial interest”. This legal term is neither defined in the current draft nor used in other sector-specific legislation. It is important to understand what is meant by this in the light of the existing complex financial ownership structures in the railway sector.
46. This lack of clarity with regard to various legal terms bears the risk of a divergent interpretation and is likely to be problematic for several Member States e.g. with regard to its implications for cooperation arrangements and existing forms of collaboration. It is important in this respect not to undermine well established investment approaches.

3. Effective independence of the infrastructure manager within a vertically integrated undertaking¹⁶

47. As the 4th Railway Package may allow vertically integrated undertakings, including those with a holding structure, to maintain ownership of the infrastructure manager it is necessary to ensure organisational and decision-making independence. IRG-Rail supports strong and efficient safeguards protecting the infrastructure manager’s independence, such as the elimination of the potential cross-subsidisation between the infrastructure manager and other parts of the integrated group, and an efficient regulatory oversight in this respect.
48. IRG-Rail also supports the proposed rules to ensure the independence of the staff and management structure of the infrastructure manager, such as the rule forbidding the members of the Supervisory Board of the vertically integrated company to take part in infrastructure manager’s governing board or senior management. With regard to the foreseen notification of different aspects of duration and termination of contracts to the Regulatory Bodies¹⁷, IRG-Rail acknowledges that Regulatory Bodies are not able to

¹⁵ Proposal amending Directive 2012/34/EU – article 7a para 3

¹⁶ Proposal amending Directive 2012/34/EU – article 7a and 7b

¹⁷ Proposal amending Directive 2012/34/EU – article 7b para 3

perform judicial functions with regard to labour law. However IRG-Rail supports the foreseen role of Regulatory Bodies aimed at enabling them to monitor properly the compliance with the new provisions.

49. For vertically separated structures, IRG-Rail welcomes the possibility of limiting subcontracting activities by the infrastructure managers to any other body if a conflict of interest arises¹⁸. However, IRG-Rail has some concerns about responsibility for monitoring and enforcing legal requirements as well as exercising regulatory control on such sub-contracting activities, in particular in respect non-discrimination.

4. Procedure of verification of compliance for vertically integrated structures

50. With regard to the proposed procedure of verification of compliance¹⁹, IRG-Rail would like to highlight the role of national Regulatory Bodies in monitoring and enforcing the legislative provisions, to ensure a level playing field and to remove and prevent any discriminatory behaviour. We believe that it should be primarily the role of strong and independent national Regulatory Bodies to ensure compliance with the requirements set out in the package and to take all necessary measures.
51. We have some concern about the interface between the role of the Commission, who will be tasked to decide whether legislation has been applied correctly, and the role of Regulatory Bodies, that will be responsible for monitoring and controlling the application of legislation to ensure a level playing field and to remove any discriminatory behaviour. This approach appears to create a parallel procedure of verification of compliance, with both the Commission and the Regulatory Body enforcing compliance. Taking into account that, under the current regime, it is for Regulatory Bodies to monitor and enforce via sanctions or fines, if necessary, while both the Commission and Regulatory Bodies will be involved in the proposed new regime, the respective roles of the Commission and Regulatory Bodies will have to be clarified and defined.
52. IRG-Rail fully understands the proposed provision that gives Member States the possibility of limiting access rights for railway undertakings which are part of vertically integrated undertakings in case the Commission is not in a position to confirm that safeguards protecting the independence of the infrastructure manager have been effectively implemented. This is intended to incentivise market opening. However IRG-rail believes that this instrument is not perfectly designed. The possibility of limiting or revoking access rights of the vertically integrated operators concerned will not incentivise compliance with the separation requirements if an undertaking is not operating abroad.
53. Furthermore it is legally problematic and too far-reaching to give Member States the possibility of limiting access rights in the following cases:

¹⁸ Proposal amending Directive 2012/34/EU – article 7 para 4

¹⁹ Proposal amending Directive 2012/34/EU –article 7c

- It would not be appropriate to allow Member States to sanction an integrated operator if the requirements on independence have been fulfilled. We consider that the Commission's right (to decide that the implementation of the requirements set out in the package is not sufficient to ensure a level playing field) would be a "carte blanche" without clear criteria or conditions laid down in the legislation.
 - It would be disproportionate to allow Member States to limit or revoke the access rights of a vertically integrated operator while the examination of a request is still pending. At this stage of the process the Commission will not yet have finished its review of whether the safeguards laid down in the package have been effectively implemented. Therefore there would be no legal basis and justification for the limiting of access at that time.
54. Clarity is also needed with regard to legal protection against the foreseen Commission's decision (e.g. where to appeal, relationship to national court proceedings etc.).
55. IRG-Rail notices that there is an inconsistency in relation to the right to limit access. Under the proposals to amend Directive 2012/34, Member States may limit the rights of access to vertically integrated undertakings that have not met the independence requirements²⁰. However, there is no parallel provision, or reference to this, in the proposals on the competitive tendering of public service contracts²¹. To minimise uncertainty, encourage investment, and promote a level playing field, it is important that there is clarity and consistency of scope with regard to the limitations on access. In particular, the proposals should avoid situations where an operator wins a tendering procedure, and sees subsequently the right to limit access being exercised when asking for capacity under the annual timetable.

5. Role of the Regulatory Bodies

56. IRG-Rail recognises that there is a new role for Regulatory Bodies in monitoring on-going compliance with the requirements for independence of an infrastructure manager and its staff²², and welcomes this. At the same time IRG-Rail stresses that such monitoring is a complex task, especially with regard to the separation of financial circuits, and could only be fulfilled properly by adequately resourced Regulatory Bodies. It is important that the Commission takes measures to ensure that in any case such monitoring also includes *ex officio* powers as foreseen under current EU legislation.

²⁰ Proposal amending Directive 2012/34/EU – article 7c, para 3

²¹ Proposal amending Regulation No 1370/2007.

²² Proposal amending Directive 2012/34/EU – article 7c, para 5

57. IRG-Rail also points to the fact that Regulatory Bodies will need a clear insight and adequate information from the relevant parties. Examples for ways of providing regulatory bodies with such an insight can be found in some Member State railway markets (for example, transparency requirements in the UK), and in other sectors (eg: compliance programme and officers in the energy sector.)
58. With regard to the obligation of the Regulatory Body to make a decision relating to the independence requirements, the legislation sets a specific time limit²³. This does not align with the more flexible time period given to the Commission²⁴. We would recommend setting also a specific time limit for the Commission to provide the necessary certainty for the market.

6. Coordination Committee

59. With regard to the proposed creation and organisation of a Coordination Committee²⁵, IRG-Rail welcomes the overall objective to ensure a well-functioning proper coordination between the infrastructure managers and the users of the network. We fully support the foreseen involvement of Regulatory Bodies as observers to the meetings of this Coordination Committee as most of the issues to be discussed by the committee relate directly or indirectly to the work of national Rail Regulatory Bodies. In addition to this IRG-Rail welcomes that Regulatory Bodies will be informed about the Committee's discussions through receipt each year of a report.
60. Nevertheless IRG-Rail believes that any coordination mechanism, and the level of detail on which infrastructure managers should take advice from the users, should leave sufficient flexibility for infrastructure managers to perform their tasks.

7. European Network of Infrastructure managers²⁶

61. IRG-Rail generally welcomes the establishment of a forum for cooperation of infrastructure managers across borders, including cooperation on the establishment of the core network corridors, rail freight corridors and the implementation of the ERTMS deployment plan. However, these arrangements should be proportionate and should not create any additional burden, in particular on small infrastructure managers.
62. Regulatory Bodies should be involved, as appropriate, in the tasks of the network in benchmarking the efficiency of infrastructure managers. In this context, it may be

²³ Proposal amending Directive 2012/34/EU – article 7c, para 5

²⁴ Proposal amending Directive 2012/34/EU – article 7c, para 3 and 4

²⁵ Proposal amending Directive 2012/34/EU – article 7d

²⁶ Proposal amending Directive 2012/34/EU – article 7e

helpful for Regulatory Bodies to conduct efficiency benchmarking as already happens in some countries, e.g. periodic review in the UK.

V. Part III: Technical Pillar

63. In the 4th Railway Package the EU Commission proposes a new system for the award of the single EU Safety Certificate and for placing rolling stock on the market and in service. The granting of the Single Safety Certificate and the decision for placing rolling stock on the market will be made by the European Railway Agency (ERA). The railway undertakings will be responsible for the decision for placing the rolling stock in service.
64. IRG-Rail supports the commission's objectives: to remove technical and administrative burdens for railway undertakings and to ensure a fair and transparent authorisation and certification process across all Member States. In several Member States it is currently often complicated and expensive to get the necessary authorisations and certificates. It is important that any changes do not introduce any additional administrative or financial burden to the railway sector, and in particular for small railway undertakings and do not compromise safety of the rail system.
65. The measures should not be disproportionate and should provide sufficient flexibility in the process, especially with regard to those railway undertakings only operating on their national networks. They should also strike the right balance of responsibilities between all relevant parties.

VI. Next steps

66. IRG-Rail will continue to assess the details of the 4th Railway Package and its regulatory impact, closely following the negotiation process. We will also contribute to discussions providing our views on regulatory issues.
67. IRG-Rail will explore the opportunity to put forward some drafting suggestions and amendments on relevant provisions, in particular in relation to market opening and infrastructure governance.
68. In order to help promote a single European rail market, IRG-Rail also intends to discuss regulatory issues with the Commission on a regular basis, contributing to the development of primary and secondary legislative proposals.