

Overview of findings regarding Implementation and interpretation of regulatory bodies' functions and powers of regulatory bodies under article 56.9

I. Introduction

1. IRG-Rail Legislative Developments working group was approached by one of its members to explore and exchange current experience on the implementation of article 56.9 of Directive 2012/34/EU (hereinafter the "Recast") on the functions of the regulatory bodies.
2. For this purpose, the working group issued a questionnaire to collect information and obtain an understanding of what article 56.9 means for regulatory bodies' competences and powers, and the appropriate measures that might be adopted under this provision.
3. According to article 56, regulatory bodies have two main functions. They are the appeal body and have to consider any complaints from any party that believes it has been unfairly treated, discriminated against or in any other way aggrieved. They have also powers to monitor the competitive situation in the rail services markets and to decide on their own initiative on measures to correct discrimination against applicants, market distortion and undesirable developments in these markets.
4. Twenty regulatory bodies out of 31 IRG-Rail members participated in this overview.¹

II. Consideration and decision making regarding complaints

5. In the countries of all responding regulatory bodies, domestic legislation gives the regulatory body appeal/complaint functions and allows them to intervene following a formal request or at their own initiative. In the case of a formal request, the Netherlands, the UK and Romania require a written notification.
6. In most cases, domestic legislation makes it clear that regulatory bodies are responsible to consider and decide on complaints submitted by parties that believe have been unfairly treated or discriminated against, in particular in relation to decisions made by an infrastructure manager, a railway undertaking or a service facilities operator. In general, the scope of regulatory intervention is similar even if expressed in a different manner in domestic legislation and covers the areas mentioned in paragraph 7.
7. The complaint procedure is open to wide a range of interested parties from infrastructure managers to any third parties. Domestic legislation in most countries restricts submission of complaints to applicants. In Poland, the regulatory body can receive complaints from passengers about their rights or about issues related to driver licences. In Germany, Latvia and Slovenia legislation requires the regulatory body to consider any complaint irrespective of who has submitted it.

¹ Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and UK

8. Parties are entitled to appeal to the regulatory body if they believe they have been unfairly treated, discriminated against, or are in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or (where appropriate) a railway undertaking or the operator of a service facility. In Spain, complaints are restricted to issues related to the infrastructure manager, railway undertakings or applicants, but not operators of service facilities. In addition, in Spain a complaint has to be submitted within a period of one month of facts occurring. In Lithuania, the regulatory body can investigate the actions and/or omissions of infrastructure managers, railway undertakings, service facility operators as well as other institutions and organisations. In Poland, the regulatory body can handle complaints regarding passenger rights and driver licences.
9. In all member states, complaints/appeals can be made with regards to: the network statement (in Spain legislation refers explicitly to: the content and application of the Network Statement); the capacity-allocation procedure and its results; the charging scheme, the level or structure of infrastructure charges or their principles; arrangements for access to and charging for services. In Spain, the delivery of services in international railway freight corridors is also included. In the Netherlands, legislation states that the regulatory body is entitled to make a decision on the conduct of a counterparty to an access agreement or a framework agreement that leads to unfair treatment, discrimination or otherwise of prejudice, or in relation to the unjustified refusal of access to a service provision.
10. Powers – Domestic legislation gives the regulatory bodies broad discretionary powers and, most importantly, all the necessary powers to request relevant information from affected parties and initiate any consultation. In Belgium, the regulatory body can appoint experts and hear witnesses.
11. Deadlines - Domestic legislation in 12 countries reflects the deadlines set out in the Recast for decision making when receiving complaints, i.e. the one month period for asking information or initiating any consultation from receipt of the complaint, and the need for the regulatory body to inform the party of its decision within six weeks of receiving all relevant information. Some countries have adopted a different approach: Croatia, Portugal and Romania legislation refers to a timeline in days (30 days). Similarly, the 6 weeks deadline from receipt of information to produce a decision has been transposed differently in Hungary and Portugal (45 days), in Lithuania (42 days) and in Romania (40 days). In Finland, certain disputes can be resolved in the first instance through conciliation that is not subject to any timeframe. In Poland, the situation is slightly different; as the Railways Act does not specify the deadline for decision-making, the general deadlines set by the Commercial Code apply, i.e. one month, or two months in the case of complicated matters to decide on.
12. Remedy- The measures for remedy as set out in the respondents' member states are very wide ranging. They include sanctions, financial penalties but also recommendations, guidelines, directions, notices.

III. Monitoring function – ex-officio investigation

13. In addition to an appeal function, regulatory bodies have also a monitoring function and can monitor the competitive situation in the rail services markets. They are required to control a certain number of areas with a view to preventing discrimination against applicants. This includes checking whether the network statement contains discriminatory clauses or creates discretionary powers for infrastructure manager that may be used to discriminate against applicants (article 56.2)
14. Powers - All respondents have indicated that domestic legislation provides them with monitoring, ex-officio, surveillance powers which can be triggered at their own initiative. Most regulatory bodies interpret this provision quite broadly – giving them comprehensive ex-officio powers at their own discretion
15. Scope – Monitoring competition in rail market services includes areas related to the network statement, the allocation process, the charging scheme, as well as arrangements for access and for charging to infrastructure and service facilities. In Spain, domestic legislation specifies that the regulatory body has a duty to safeguard competition in railway services and ensure transparency and non-discrimination. It has also to guarantee equality between railway undertakings and applicants for access to the rail services market. In Lithuania, the regulatory body has general duties to establish conditions for effective competition and development of the rail transport services market and conditions preventing market players from abusing their influence in the rail transport market.
16. Remedy – Most regulatory bodies confirmed that domestic legislation empowers them to decide on appropriate measure to correct any discrimination, without prejudice of the powers of the competition authorities. Remedy is generally outlined in legislation and is very wide ranging – from financial penalties and fines to binding measures, recommendations, notices, guidelines, instructions, etc. This is left to the regulatory body's discretion. In Hungary, applicable sanctions are listed in the railways act.
17. There are however some differences in transposition.
 - In Luxembourg, this is not specifically foreseen in the domestic legislation but the regulatory body is encouraged and allowed to cooperate with other authorities subject to respecting the principle of confidentiality initially assigned to information.
 - In the Netherlands, legislation requires the regulatory body to submit every year an annual monitoring report to the Minister.
 - In Sweden, the regulator must supervise compliance of the law and other regulations and monitor the markets for rail services to ensure that they work efficiently and are competitive.
 - In the UK, the regulatory body must monitor the competitive situation in the rail services market and must, where appropriate, give appropriate directions to correct discrimination, market distortion or undesirable developments on the rail market.

IV. “Appropriate measures” – interpretation

18. Article 56.9 of the Recast states that without the prejudice of the national competition authorities for securing competition in the rail services markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct

discrimination against applicants, market distortion and any other undesirable developments.

19. All regulatory bodies have confirmed that domestic legislation does not define what are “appropriate measures” and that this is left to regulatory bodies’ discretion.
 - a. In Belgium, legislation mentions necessary rather than appropriate measures
 - b. In Germany, the legal principle of proportionality (practicability, necessity and reasonableness) apply.
 - c. In Denmark, such measures can include fixing weekly fines that are high enough to deprive the relevant party from any possible gain if not applying the regulator’s decision
 - d. In Portugal and Romania, legislation refers to “adequate measures”.
20. Many regulatory bodies have relied upon and used this article to make decisions on many different issues, ranging from decision on access issues in service facilities and on the network (DK, FR, PL, RO, SI, SE) on ticketing spaces (IT) , charges (BE, BG FR, IT, LV, RO), train delays (SE), train drivers (ES). Further details and web links to decisions are provided in the table annexed to this paper. In the Netherlands and in the UK, regulatory bodies have based their decisions on national instruments rather than rely on this specific provision.
21. The survey showed that there is a consensus that “appropriate measures” should be left to the discretion of each regulatory body and should be interpreted in a wide sense. Such measures would cover binding directions and guidelines, recommendations, notices, fines, etc. Most respondents also consider that the scope and interpretation of “appropriate measures” cover any area of market regulation that falls within the scope of regulatory bodies’ competences and powers. However, in BE, BG and IT, regulatory bodies believe the scope is limited to areas falling under article 56.1 only.

ANNEX - Detailed responses

BELGIUM

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p><u>BE: Article 65 of Belgian Railway Code (30 August 2013 Act establishing the Railway Code)</u> http://www.ejustice.just.fgov.be/eli/loi/2013/08/30/2013014641/justel Art. 65. [In its ex-officio competences and following a complaint], the regulatory body shall adopt a decision after having heard the parties involved, within six weeks from the receipt of all useful information. The regulatory body shall handle complaints and ask for relevant information and initiate consultation with all relevant parties within one month from the receipt of the complaint. [...] [...] It can carry out or order any useful investigation and, if necessary, appoint experts and hear witnesses. The regulatory body shall notify its decisions to the parties and make them public within 15 days from the adoption of the decision. The decisions are binding for all relevant parties. [...]</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>This Belgian provision is only in relation to complaints received under Article 56.1 of the Directive (transposed in Article 62 § 5 of the Belgian Railway Code). The powers of the RB are broad in terms of the information that can be requested, with the express provision that the RB can appoint experts and hear witnesses and of the types of decisions that can be adopted (regarding the latter, Article 63, § 3 of the Belgian Railway Code provides that the RB shall take any necessary measure, including conservatory measures and administrative fines). Another provision, Article 66/3 of the Railway Code, also gives us a broad and general power to request useful information from the IM, the candidates and any other interested party.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p><u>BE: Articles 62, § 3 and 63, § 3 of Belgian Railway Code (30 August 2013 Act establishing the Railway Code)</u> http://www.ejustice.just.fgov.be/eli/loi/2013/08/30/2013014641/justel <u>Article 62, § 3:</u> When exercising its ex-officio competences, the regulatory body: [...] 4° without prejudice to the 15 September 2006 Act on the protection of economic competition, controls competition in the rail service markets, including the freight transport market; [...] Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body is empowered to follow the situation of competition on the rail service markets and, in particular, to control subparagraph 1, 1° to 10°, on its own initiative to prevent any discrimination against applicants. It shall notably verify whether the network statement contains discriminatory clauses or entrusts the infrastructure manager with discretionary powers that can be used to discriminate applicants.</p>

	<p><u>Article 63, § 3</u>: In executing its control missions [...], the regulatory body shall take any necessary measure, including conservatory measures and administrative fines, to put an end to breaches in relation to the network statement, the allocation process, the infrastructure charging and the provisions relating to access [...] notably in the area of access to service facilities [...].</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>We interpret those provisions broadly in terms of measures that can be adopted (even though Belgian law says <u>necessary</u> measures, not <u>appropriate</u> measures). In terms of scope of application, we also interpret those provisions broadly, but only insofar as the powers of national competition authorities are not concerned.</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No, but examples are given in the legislation: “including conservatory measures and administrative fines”</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>In our decision D-2015-11-S “Your Shunts”, we decided that the new shunting charges formula was abolished and replaced with the former formula. We also imposed a fine. Dutch (original) version: http://www.regul.be/sites/regul.be/files/bijlagen/D-2015-11-S.pdf French translation: http://www.regul.be/sites/regul.be/files/bijlagen/D-2015-11-S-%20FR%202.pdf</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>This is broad and includes the examples given here.</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>In all the areas falling into the scope of the RB’s competencies under Article 56(1) of the Directive.</p>

BULGARIA

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Railway Transport Act</p> <p>Article. 116: paragraph 5. The Railway Administration Executive Agency shall exercise control on its own initiative or on complaints from applicants who consider that they have been unlawfully treated, discriminated or injured in any way, as well as on complaints against a decision of the Infrastructure Manager, on a railway undertaking or operator of a service facility. paragraph 6. The Executive Director of the Railway Administration Executive Agency shall conduct a survey of the complaints under paragraph 5 within one month of their adoption. paragraph 7. Within the term under paragraph 6 the Executive Director of the Railway Administration Executive Agency may request additional information and / or start consultations with all interested parties. The time limit for receipt of information and / or conduct consultation may not exceed one month and may be extended in exceptional circumstances by a maximum of two weeks. paragraph 8. The Executive Director of the Executive Agency "Railway Administration" shall pronounce with reasoned decision on the complaints under paragraph 5 within 6 weeks of receipt of all necessary information or from filing of the complaint in the event that the additional information was not required under paragraph 7. paragraph 9. By the decision under paragraph 8 the Executive Director of the Executive Agency "Railway Administration": 1. reject the appeal without respect; 2. Cancels the act and / or orders the suspension of the action and indicates the actions to be taken. paragraph 10. The decision under paragraph 8 may be appealed in accordance with the Administrative Procedure Code.</p> <p>Ordinance No. 41 Article. 30. paragraph 1. The Executive Director of the Executive Agency "Railway Administration" shall pronounce with motivated decision on the appeal under Art. 29, paragraph 1 in the order and within the terms of art. 116 of the Railway Transport Act. paragraph 2. The decisions under paragraph 1 may be appealed in accordance with the Administrative Procedure Code. paragraph 3. The Executive Agency "Railway Administration" publishes its decisions on its website.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>The Railway Administration Executive Agency considers complaints or performs own-initiative investigations regarding: 1. the project and the final version of the network statement for the railway network; 2. the criteria set out in the network statement; 3. the capacity allocation process and its outcome; 4. the charging scheme; 5. the level or structure of the charges for the use of the infrastructure whose payment owes or may be imposed;</p>

	<p>6. the rules on access to railway infrastructure, including the provision of international passenger services, to service facilities and ancillary services;</p> <p>7. access and charging for services in service facilities, for the additional and ancillary services.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Railway Transport Act</p> <p>Article. 116 paragraph 5. The Railway Administration Executive Agency shall exercise control on its own initiative or on the basis of a complaint by applicants who consider that they have been unfairly treated, discriminated against or injured in any way, as well as appeals against decisions of an infrastructure manager, a railway undertaking or an operator of a service facility in respect of:</p> <ol style="list-style-type: none"> 1. the project and the final version of the network statement for the railway network; 2. the criteria set out in the network statement; 3. the capacity allocation process and its outcome; 4. the charging scheme; 5. the level or structure of the charges for the use of the infrastructure whose payment owes or may be imposed; 6. the rules on access to railway infrastructure, including the provision of international passenger services, to service facilities and ancillary services; 7. access and charging of services in the service facilities, for the additional and ancillary services. <p>Article. 7. paragraph 1. The Executive Agency "Railway Administration" :</p> <p>point 10. monitors the conditions of competition in the rail services market and provides annually to the European Commission the necessary information on the use of the networks and the assessment of the framework conditions in the rail sector;</p> <p>point 11. controls the infrastructure manager and service facility operators in setting the charges for the use of railway infrastructure and service facilities respectively, including in order to prevent discrimination against applicants and maintain the equilibrium of the rail services market;</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>The Railway Administration Executive Agency has the power to exercise control on its own initiative to ensure competition in the rail services markets and to issue decisions to take appropriate actions in the case of violations found.</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Yes - Issue of prescriptions to the infrastructure manager regarding:</p> <ul style="list-style-type: none"> - track access charges for access to railway infrastructure - Compensation of the additional costs of railway undertakings as a result of running on indirect routes.
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>binding guidelines, recommendations, prescriptions, solutions, opinions, proposals</p>

In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.

- access to railway infrastructure
- service facilities
- passenger services for the carriage of passengers
- access to service facilities and services therein
- charging for access to railway infrastructure

CROATIA

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Act on the Regulation of Rail Services Market and the Protection of the Passenger Rights in Rail Transport (OG 104/17) Link: https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_104_2382.html</p> <p>Article 14. (1) It falls within the powers of the Regulatory body to carry out the following regulatory and other activities: 1. resolving appeals which are submitted to the Regulatory body by an applicant if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:</p> <p>Article 15. (1) Applicants may file a complaint with the Regulatory body challenging a decision, proceedings, actions or omissions, where action was required, that led to or could have led to discrimination, restriction or prevention of access to the market or to illegal action by the infrastructure manager, the railway undertaking or the service facility operator, particularly with regard Article 14. paragraph 1. Subparagraph 1. of this Act. (2) Regulatory body shall within 30 days of receipt of the request ask for relevant information, and initiate consultation with all interested parties and then adopt a reasoned decision within further 30 days.</p> <p>Article 16. (1) Infrastructure manager, service facility operator, applicant and other market participants are obliged to submit necessary information to the Regulatory body in order to facilitate rail market services regulation procedures</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Act on the Regulation of Rail Services Market and the Protection of the Passenger Rights in Rail Transport (OG 104/17) Link: https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_104_2382.html</p> <p>Article 6. (3) When performing regulatory functions provided for in this Act the regulatory body shall take any appropriate measures, applying principles of objectivity, transparency, non-discrimination and proportionality in order to ensure regulatory principles and objectives for the proper functioning of the rail services market and rail passenger protection.</p> <p>Article 14. (4) Regulatory body is entitled on its own initiative to monitor the level of competition in the rail services market and infrastructure manager's activities and decide on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with</p>

	reference to activities in Paragraph 1. Subparagraph 1. of this Article.
MONITORING FUNCTION <i>Your interpretation – powers of the RB</i>	
Does your RB have a definition of what constitutes an “ appropriate measure ” in the light of Article 56.9?	No
In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?	Yes We suggested to the infrastructure manager to modify NS wherever it was needed.
In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..	We believe that it can be recommendations, opinion binding directions
In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.	It can be any area of rail market regulation, for example Network Statement, Network Statement for service facilities, Access to Services Facilities and Supply of Services, Use of Service Facilities, , Additional Services, Ancillary Services etc.

DENMARK

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Bkg. 1136/2015, § 13: Jernbanenævnet behandler klager indenfor sit kompetenceområde. Hvis det er nødvendigt, anmoder Jernbanenævnet om relevante oplysninger og tager initiativ til høring af alle relevante parter senest en måned efter modtagelsen af klagen. Stk. 2: Under sagsbehandlingen træffer Jernbanenævnet de fornødne foranstaltninger og informerer de relevante parter om sin begrundede afgørelse eller beslutning inden for en forud fastsat rimelig frist, dog altid senest 6 uger efter modtagelsen af alle relevante oplysninger.</p> <p><i>Without prejudice to Article 46(6), an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:</i></p> <ul style="list-style-type: none"> - the network statement in its provisional or final versions; - the criteria set out in it; - the allocation process and its result; - the charging scheme; - the level or structure of infrastructure charges which it is, or may be, required to pay; - the arrangements for access; - access to and charging for services. <p>2. <i>Without prejudice to the powers of the national competition authorities for securing competition in the rail services markets, the regulatory body shall have the power to monitor the competitive situation in the rail services markets and shall, in particular, control points (a) to (g) of paragraph 1 on its own initiative and with a view to preventing discrimination against applicants. It shall, in particular, check whether the network statement contains discriminatory clauses or creates discretionary powers for the infrastructure manager that may be used to discriminate against applicants.</i></p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>§ 13 is a correct implementation of the text (first two sentences) from article 56.9.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Jernbanelov 2015/686. § 103: Jernbanenævnet varetager tilsyns- og klagefunktioner på jernbaneområdet. Jernbanenævnet kan undersøge sager på eget initiativ eller efter klage. § 107: Jernbanenævnet kan pålægge ugentlige tvangsbøder til den, der undlader at 1. udlevere oplysninger inden for den frist, som Jernbanenævnet har givet, eller efterkomme en afgørelse truffet af Jernbanenævnet som led i dets udførelse af de klage- og tilsynsfunktioner, der følger af § 103, jf. § 113, stk. 4.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>§ 103 empowers the Danish RB to act upon complaints as well as ex officio. § 107 empowers the Danish RB to impose fines towards those who fail to follow its decisions.</p>

<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No formal definition. But when issuing fines (see above) the Danish RB aims at fixing the weekly fines high enough to deprive the relevant part from any possible economic gain from not following the RB decision. This has been an extremely efficient enforcement tool.</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>A few times, the Danish RB has issued notices about weekly fines towards one of our terminal operators. This led the terminal operator to comply with the RB decisions – and therefore it was not necessary actually to issue the fines.</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>At first, the RB makes a formal decision towards the relevant party, stating what the party has to do, including a specific deadline for this and a notice/ warning about weekly fines in case the deadline is exceeded. Secondly, in case the deadline is exceeded, the RB will issue weekly fines aiming at depriving the relevant part from any possible economic gain for not following the RB decision.</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>Weekly fines for not following an RB decision could concern any area within the competence of the RB. Some examples could be:</p> <ul style="list-style-type: none"> - In case a part does not provide the RB with required information necessary for the RB to fulfil its functions. - In case a terminal operator fails to follow a request from the RB about correcting its general terms or about lowering its charges or about publicizing information, etc. - In case an IM fails to follow a RB decision about access for a RU. <p>Etc.</p>

GERMANY

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>§ 68.1: „Binnen eines Monats ab Erhalt einer Beschwerde prüft die Regulierungsbehörde die Beschwerde. Dazu fordert sie von den Betroffenen die für die Entscheidung erforderlichen Auskünfte an und leitet Gespräche mit allen Betroffenen ein. Innerhalb einer vorab bestimmten angemessenen Frist, in jedem Fall aber binnen sechs Wochen nach Erhalt aller erforderlichen Informationen entscheidet sie über die Beschwerde, trifft Abhilfemaßnahmen und setzt die Betroffenen von ihrer Entscheidung, die zu begründen ist, in Kenntnis.“</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>§ 68.1 is a literal translation of the directive's wording.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>§ 68.1: “Unabhängig von den Zuständigkeiten der Kartellbehörden entscheidet sie von Amts wegen über geeignete Maßnahmen zur Verhütung von Diskriminierung und Marktverzerrung.“</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Comprehensive ex officio powers.</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>There is no formal definition but there is a German legal principle of proportionality. A measure is proportional if it is practical, necessary and reasonable. (see Wikipedia)</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Decision of the Ruling Chamber</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>BNetzA takes appropriate measure regarding specific decisions of the IMs, i.E. denial of track access or setting up network statements. BNetzA has the power to obligate IM to change their decisions or to decide upon the validity of contracts</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>In all areas where BNetzA has powers: track access, service facility access, track access charges and charges for services.</p>

FINLAND

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>The regulatory body shall initiate handling of complaints and shall ask for relevant information in order to decide the matters within one month from the receipt of the complaint unless otherwise stated in the Finnish Railway Act. It shall decide on any complaints and inform the relevant parties of its decision within six weeks from receipt of all relevant information.</p> <p>The regulatory body shall investigate and decide the matters in its powers on its own initiative or on the initiative of railway undertakings, infrastructure managers, applicants of capacity, operators of service facilities, applicants of the services, training centers, companies which need training services, competent authorities or anyone whose right the matter may concern.</p> <p>Railway undertakings, applicants of capacity, companies which need training services, infrastructure managers, operators of service facilities or other operators which offer services or competent authorities may ask the regulatory body to investigate and decide the disputes (other than disputes concerning the certain decisions of infrastructure manager → subject to claim for rectification) if it believes that it has been unfairly treated, discriminated against or someone acts against the Finnish Railway Act. The regulatory body may also investigate the matters on its own initiative.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>The regulatory body shall consider the complaints which concern the functioning of railway market and which are in its powers under the Finnish Railway Act. For example, there is no regulation concerning access to rolling stock in the Finnish Railway Act. Therefore, our interpretation is that these issues are in the powers of competition authority.</p> <p>The regulatory body may investigate and decide on cases, which concern the market regulation of the Finnish Railway Act.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>The regulatory body monitors, enforces and promotes the functioning of railway market as well as the equal and non-discriminatory treatment of parties.</p> <p>The regulatory body shall decide on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	No
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	No

<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	

FRANCE

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Article is transposed in domestic legislation by two texts:</p> <ul style="list-style-type: none"> - Article L. 1263-2 of the French transport code. This article sets out a dispute resolution procedure - article L. 1264-7 of the French transport code. This article sets out a sanctions procedure <p><i>Please note that the new provisions introduced by Directive 2016/2370 of 14 December 2016 in article 56.9 have not yet been transposed in domestic legislation. They shall be transposed by 25 December 2018</i></p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<ul style="list-style-type: none"> - Under article L. 1263-2 of the French transport code, any applicant, infrastructure manager or operator of service facility may seize the RB of a dispute when it feels victim of an unfair treatment, discrimination or any other harm relating to the access to the railway network. The RB's decision defines the conditions of technical and financial settlement of the dispute - Under article L. 1264-7 of the French transport code, the RB may sanction, after an unsuccessful formal notice decided by its college (article L. 1264-8), any infringement by an infrastructure manager, an operator of service facility, a railway undertaking or an applicant of its obligations relating to the access or use of the railway network. This infringement procedure can be launched either on the RB's own initiative or on the basis of a request submitted by any infrastructure manager, operator of service facility, railway undertaking or applicant (article L. 1264-1). By giving a formal notice, the RB requests the concerned operator to take appropriate measures in order to put an end to the infringement. It may also be the case that during the investigation phase that is carried out before the issuance of a formal notice, the operator takes appropriate measures to put an end to the infringement, in which case the procedure is closed
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Article is transposed in domestic legislation by Article L. 1264-7 of the French transport code</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>As explained above, the infringement procedure provided for in article L. 1264-7 of the French transport code can be launched on the RB's own initiative (article L. 1264-1)</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>We do not have a definition of what constitutes an “appropriate measure”</p> <p>Neither article L. 1263-2 (i.e. when the RB decides on the conditions of technical and financial settlement of a dispute) nor article L. 1264-8 (i.e. when the RB decides on the content of a formal notice)</p>

	<p>of the French transport code sets out a predetermined list of “appropriate measures”.</p> <p>Accordingly appropriate measures are defined by the RB on a case-by-case basis, taking into account the facts and issues of each case</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>We have already, on our own initiative, opened infringement proceedings leading the operators concerned to take appropriate measures.</p> <p>For example :</p> <ul style="list-style-type: none"> - We have opened an infringement procedure against SNCF Mobilités as the latter had failed to fulfill its obligations regarding the notification to the RB of some data on the railway transport. During the investigation phase of the procedure, SNCF Mobilités has sent to the RB the appropriate data. Consequently, the case was dismissed in a decision dated 20 September 2017 - On 25 May 2016, a formal notice has been given to SNCF as the latter had breached its obligation, laid down in article L. 2102-1 of the French transport code, to do not exercise SNCF Réseau’s and SNCF Mobilités’ refuelling missions. Following this notice, SNCF has transferred its refuelling division to SNCF Mobilités and therefore the case was dismissed in a decision dated 18 October 2018 - On 5 May 2015, the RB has issued a favorable opinion on the tariffs submitted by SNCF Mobilités for the access to its light maintenance facilities, subject to conditions consisting in the justification of certain costs assumptions. On 15 Mars 2017, we have opened an infringement procedure against SNCF Mobilités as the latter had not justified at that date these assumptions and accordingly had no tariffs approved by the RB. Following the submission by SNCF Mobilités of new (and lower) tariffs on 21 December 2017, the RB might issue a favorable opinion on these tariffs and consequently adopt a decision closing the infringement procedure. This is subject to an opinion and a decision of the college scheduled on 12 March 2018 - Decision n°2017-097 dated 20 September 2017 : http://www.arafer.fr/wp-content/uploads/2017/10/D%C3%A9cision-2017-097-du-20-septembre-2017-Non-lieu-manquement-collecte-SN-version-publique-.pdf - Decision n°2016-78 dated 25 May 2016 : http://www.arafer.fr/wp-content/uploads/2016/06/Decision-2016-078-du-25-mai-2016-Mise-en-demeure-SNCF-Combustible.pdf - Decision n°2017-118 dated 18 October 2017 : http://www.arafer.fr/wp-content/uploads/2017/11/D%C3%A9cision-2017-118-du-18-octobre-2017-Non-lieu-sanction-SNCF-Combustible-VERSION-PUBLIQUE-1.pdf
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations,</p>	<p>Please see above</p>

imposition of compulsory wholesale access/services, etc..	
In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.	Please see above

HUNGARY

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>a.) Partly, it is regulated in the context of a special appeal procedure: Applicants and/or the non-independent infrastructure manager may submit a complaint to the regulatory body if - in their opinion –the subjects regulated in Article 56 Paragraph 1 of the RECAST Directive were violated.</p> <p>The regulatory body is authorized to ask for any relevant data, documents from the parties.</p> <p>A decision must be made within 45 days receiving the complaint.</p> <p>An exhaustive list of applicable sanctions can be found in the railway act (e.g. imposing a fine).</p> <p>If during the procedure of the regulatory body breaches violating other legislation were detected, the regulatory body is obliged to make a notification towards the competition authority.</p> <p>b.) Partly, it is regulated in the context of general rules of market surveillance process:</p> <p>Market surveillance procedure might be carried out upon request too.</p> <p>The decision must be made in accordance with the general rules of administrative proceedings.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Information above reflects our interpretation</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Market surveillance procedure might be carried out ex officio too.</p> <p>The decision must be made in accordance with the general rules of administrative proceedings.</p> <p>An exhaustive list of applicable sanctions can be found in the railway act:</p> <p>The regulatory body can</p> <ul style="list-style-type: none"> - oblige the entity that committed the infringement to pay the legal expenses; - impose a fine; - specify the requirements of performing certain activity; - prohibit the performing of unlawful activity. <p>In special circumstances the regulatory body may use a warning instead of the above mentioned sanctions.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Information above reflects our interpretation</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>An exhaustive list of applicable sanctions can be found in the railway act.</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate</p>	<p>No, we have not yet.</p>

<p>measures” based on this article? Could you list or provide links to such decisions?</p>	
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<ul style="list-style-type: none"> - specifying the requirements of performing certain activities lawfully - imposing financial sanctions
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>It is applicable in connection with the areas listed in Article 56 Paragraph (1), with a wide interpretation depending on the actual case.</p>

ITALY

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>IT. Art. 37.9 Legislative Decree No 112 of 15 July 2015</p> <p>Implementation of Directive 2012/34/ EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast).</p> <p>37.9 The regulatory body shall review all complaints and, as appropriate, request relevant information and initiate consultations with all interested parties within one month of receipt of the complaint. It shall decide on complaints, take the necessary measures to remedy the situation and inform the interested parties of its reasoned decision within a reasonable and pre-determined period of time, in any case no later than six weeks from receipt of all relevant information.</p> <p>http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2015-07-24&atto.codiceRedazionale=15G00126&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D37%26numeroProvvedimento%3D112%26testo%3D%26annoprovvvedimento%3D2015%26giornoProvvedimento%3D&currentPage=1</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Wide powers apply to regulated entities following an appeal (i.e. complaint)</p> <p>e.g. with regard to disputes on the allocation of infrastructure capacity, each applicant has the right to appeal to the regulatory body, if he considers that he has been subjected to unfair treatment, discrimination or any other injury; in particular he may appeal against decisions taken by the infrastructure manager or by the railway undertaking or service facility operator in relation to the following:</p> <ul style="list-style-type: none"> a) network information sheet in the provisional and final version; b) criteria contained therein; c) allocation procedure and related outcome; d) charging system; e) level or structure of charges for the use of the infrastructure that the IM or railway undertaking or service facility operator is required or may be required to pay; f) access agreements; g) access to services and fees imposed for their use.
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body</p>	<p>IT. Art. 37.9, Legislative Decree No. 112 of 15 July 2015, Implementation of Directive 2012/34/ EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast).</p>

<p>shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Without prejudice to the competences of the Antitrust Authority on the railway market, the Transport Regulation Authority has the power to monitor competitiveness on the rail market and, in particular, control the activities referred to in paragraph 2, letters a) through g) on its own initiative and in order to avoid discrimination against applicants. In particular, the Authority checks that the network statement does not contain discriminatory clauses and does not attribute to the infrastructure manager discretionary powers that can be used to discriminate against applicants. http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2015-07-24&atto.codiceRedazionale=15G00126&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D37%26numeroProvvedimento%3D112%26testo%3D%26annoprovvvedimento%3D2015%26giornoProvvedimento%3D&currentPage=1</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Discretion, form and method fall entirely under the RB's remit.</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No. The appropriate measure is not defined, but decided upon on a case-by-case basis to avoid self-limitation of the RB's power of discretion.</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Yes. 1. case of discrimination by a service facility operator for denying access to ticketing spaces to a railway undertaking ; 2. unfair charge applied by the infrastructure manager to freight railway undertakings. Please note: On 15th March 2018 ART started an investigation on the conduct of the infrastructure manager, that authorised one of the two high-speed rail undertakings to run its trains at a speed of 250 km/h, instead of the pre-determined 300 km/h, thus causing delays to the trains of the other RU. http://www.autorita-trasporti.it/wp-content/uploads/2016/04/Delibera-nr.-94-del-04-agosto-2016-spazi-in-stazione_signed.pdf; http://www.autorita-trasporti.it/wp-content/uploads/2016/04/Delibera-n.-152_2016-Chiusura-del-procedimento-def_signed.pdf; https://www.autorita-trasporti.it/wp-content/uploads/2016/04/Delibera-n.-28_2018-_signed.pdf.</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>Based on experienced cases: Order a service facility operator to grant ticketing space to other railway undertakings. Order the infrastructure manager to recalculate charges to be applied to railway undertakings.</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>Pls refer to those listed in art. 37.2 of Legislative Decree No. 112 of 15 July 2015 Implementation of Directive 2012/34 / EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast). e.g. against decisions taken by the infrastructure manager or by the railway undertaking or service facility operator in relation to the following: a) network information sheet in the provisional and final version; b) criteria contained therein; c) allocation procedure and related outcome; d) charging system;</p>

	<p>e) level or structure of charges for the use of the infrastructure that the IM or railway undertaking or service facility operator is required or may be required to pay;</p> <p>f) access agreements;</p> <p>g) access to services and fees imposed for their use.</p>
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LATVIA

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>State Railway Administration considers all complaints, if necessary, requests the necessary information and initiate consultations with all the parties within one month after receipt of the complaint. It decides on complaints, takes steps to improve the situation and informs the parties concerned of their reasoned decision within a predetermined and reasonable time, but not later than six weeks after receiving all relevant information.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>In connection with article 56(1) an applicant shall have the right to appeal to the regulatory body if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved. Thus, the regulatory body considers all of these complaints irrespective of the form or content. Obviously, RB only undertakes the complaints that are in its competence without overstepping the competitive authorities competence.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>State Railway Administration shall, if appropriate, on its own initiative decide on measures to prevent discrimination against applicants, market distortions and other undesirable trends in the relevant markets, in particular referring to the provisions of Paragraph one, Clause 8, "a", "b", "c", "d", "e", "f" and "g".</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Yes - Only in Latvian: Valsts dzelzceļa administrācijas 01.02.2018. lēmums Nr. 1.5.-6/6 "Par maksas iekasēšanas shēmu". http://vda.gov.lv/?id=384&said=384 Decision: RB has obligated the IM to amend the <u>Infrastructure charge collection scheme</u>, so that also applicants can use railway infrastructure against a charge if the applicant has concluded such an agreement with IM per article 44(1) of Directive 2012/34.</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>Binding directions</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>Appropriated measures are applicable in all cases. The particular nature of a complaint determines which “appropriated measure” RB should use.</p>

LITHUANIA

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p><u>The Railway Transport Code</u> <u>Art. 7¹ paragraph 1 point 1 and paragraph 2</u> “7¹. The principles of the regulation of the railway transport market 1. <i>Functions of the regulatory body:</i> 1) <i>on its own initiative or based on the complaints by applicants investigates the actions and (or) omissions of public railway infrastructure managers, railway service operators of the service facilities, railway undertakings (operators), institutions, bodies or organizations, including decisions adopted in accordance with their competence concerning the limitations of the right to use public railway infrastructure, railway services facilities and services in services facilities, the content of network statement, developed and published by the public railway infrastructure manager, the allocation of the capacity of the public railway infrastructure, the amount of the fees payable by the railway undertaking (operator) for the minimum access package, also for the use of railway services facilities and services supplied in these facilities and for the additional and ancillary services;</i> 2. <i>Regulatory body, while investigating the complaints, shall adopt the decision and inform the applicant within 42 days of receipt of all information necessary to investigate the relevant complaint and, if the complaint is found justified, shall take actions to remedy the situation as well as request to change or annul the appealed decision or its part and to impose sanctions provided for in paragraph 3 of this article on operators who do not comply with the decision of regulatory body.”</i></p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>The broad scope of functions of RB relating to the investigation of complaints which are not limited to the cases listed as examples in the Art. 7¹ paragraph 1 point 1 of the Railway transport Code. The main criteria is that the person who files the complaint falls within the definition “applicant” as it is described in the Art. 3 point 19 of the Directive 2012/34/EU(Art. 3 paragraph 34 of The Railway Transport Code accordingly).</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p><u>The Railway Transport Code</u> <u>Art. 7 paragraph 4 and Art. 7¹ paragraph 1</u> <u>Art 7 paragraph 4</u> <i>“4. The Communications Regulatory Authority is a rail transport market regulator (hereinafter referred to as the market regulator). It carries out monitoring of the market of rail transport services of the Republic of Lithuania, regulates the relations between the institutions specified in Paragraph 3 of this Article, the public railway infrastructure manager, operators of railway service facilities and railway undertaking and seeks to establish conditions for the effective competition and development in the railway transport services market in the Republic of Lithuania, as well as conditions, which prevent the public railway infrastructure manager, operators of railway service facilities to abuse their influence in the rail transport services market of the Republic of Lithuania. <..>”</i> “7¹. The principles of the regulation of the railway transport market 1. <i>Functions of the regulatory body:</i> 1) <i>on its own initiative or based on the complaints by applicants investigates the actions and (or) omissions of public railway infrastructure managers, railway service operators of the service</i></p>

	<i>facilities, railway undertakings (operators), institutions, bodies or organizations, including decisions adopted in accordance with their competence concerning the limitations of the right to use public railway infrastructure, railway services facilities and services in services facilities, the content of network statement, developed and published by the public railway infrastructure manager, the allocation of the capacity of the public railway infrastructure, the amount of the fees payable by the railway undertaking (operator) for the minimum access package, also for the use of railway services facilities and services supplied in these facilities and for the additional and ancillary services;</i>
MONITORING FUNCTION <i>Your interpretation – powers of the RB</i>	The scope of actions that can be taken by the RB while carrying out the market investigation on its own initiative is not described in the law; it is left for the RB to decide on case by case basis.
Does your RB have a definition of what constitutes an “ appropriate measure ” in the light of Article 56.9?	No.
In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?	No.
In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..	It should be left for the discretion of RB depending on the circumstances of the case.
In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.	Art. 56.9 should be interpreted together with Art 56.2 and could be applied in any area of rail service market in case the situation concerned creates a discrimination, market distortion or any other undesirable developments in the market.

LUXEMBOURG

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Literal transposition: (Loi modifiée sur la regulation du marché ferroviaire – Art.5(4)) (4) « Le régulateur examine chaque plainte, et, en cas de besoin, sollicite des informations utiles et engage des consultations avec toutes les parties concernées dans un délai d'un mois à compter de la réception de la plainte. Il se prononce sur toutes les plaintes, adopte les mesures nécessaires et communique sa décision motivée aux parties concernées dans les six semaines suivant la réception de toutes les informations utiles. ... »</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>No position/interpretation adopted so far</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Literal transposition without reference to the competition authority. Art 5(3) of the same law. « (3) Le régulateur est habilité à assurer le suivi de la situation de la concurrence sur les marchés des services ferroviaires et à contrôler le paragraphe 1er, points 1 à 7, de sa propre initiative en vue de prévenir toute discrimination à l'égard des candidats. Il vérifie si le DRR contient des clauses discriminatoires ou octroie à l'Administration des pouvoirs discrétionnaires pouvant être utilisés à des fins de discrimination à l'égard des candidats. De sa propre initiative, le régulateur prend les mesures appropriées pour corriger toute discrimination à l'égard des candidats, toute distorsion du marché et toute autre évolution indésirable sur le marché des services ferroviaires, au regard du paragraphe 1er, points 1 à 7. En outre, le régulateur coopère étroitement avec l'Administration en sa qualité d'organisme de répartition et avec le ministre. ... »</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No formal definition. Understanding of formal act ordering change of situation.</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>No.</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>Not analysed.</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>Not analysed</p>

NETHERLANDS

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Railway Act, article 71: 1. A titleholder as referred to in Article 57, a railway undertaking, a party to an access agreement or a framework agreement as referred to in chapter 4 or another party involved, can submit a written request to the Authority for Consumers and Markets to investigate whether an infrastructure manager, an operator of a service facility or a railway undertaking vis-à-vis the applicant applied [practiced]: a. unfair treatment, discrimination or otherwise of prejudice as referred to in Article 56, first paragraph, of Directive 2012/34/EU; b. conduct of a counterparty to an access agreement or a framework agreement that leads to unfair treatment, discrimination or otherwise of prejudice; c. unjustified refusal of access to a service provision in the event of a conflict as referred to in Article 13, paragraph 5, of Directive 2012/34/EU 2. The Authority for Consumers and the Market decides on an application as referred to in the first paragraph. 3. If the Authority for Consumers and the Market decides that access to a service facility as referred to in Article 13, fifth paragraph of Directive 2012/34 / EU has been wrongly refused, it shall take measures to the extent necessary to ensure that an appropriate part of the available capacity for the relevant service provision is allocated to the relevant railway undertaking. 4. The Authority for Consumers and Markets may, if necessary, impose an order subject to a penalty. [...] 6. The Authority for Consumers and Markets shall, with due observance of article 56, eighth and ninth paragraphs of Directive 2012/34/EU, set the terms within which it will take a decision as referred to in the second paragraph, as well as the deadlines for providing the data and documents required for the investigation. [...] >>Decree setting deadlines for the complaints procedure of Article 71 of the Railways Act: > 4 weeks for information requests. > 6 weeks after receipt of all information for decision.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>NL: Broad scope, complaint procedure open for wide range of interested parties. Variety of measures possible: decisions, periodic penalty payments, mediation.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable</p>	<p>Railway Act, article 70: [...] 2. The Authority for Consumers and Markets is charged with supervising compliance with the provisions pursuant to [...]. [...] 4. The Authority for Consumers and Markets investigates on its own initiative the state of competition in the market for rail</p>

<p>developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>transport services, in particular with respect to the subjects mentioned in Article 56, first paragraph, under a to g, [as of 2019:j] of Directive 2012/34/EU and will submit an annual report to Our Minister on these.</p> <p>Railway Act, article 76: [...] 2. In case of violation of the provisions pursuant to [...], the Authority for Consumers and Markets may impose on the offender: a. an administrative fine; b. an order subject to a periodic penalty payment.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Articles 70 and 76 cover the RB-powers as mentioned in Directive 2012/34. Powers to monitor and take measures on own initiative. (periodic penalty payments, penalties, binding indications and decisions)</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>We intervene on the basis of the national instruments which have been attributed to us as a market regulator. we have been able to published a on specific issues.</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>We use a variety of instruments to influence te market like marketscans and opinions, but also monition talks, (deeds of) commitment, orders under periodic penalty payment, binding indications and penalties. Which instrument is appropriate, however depends on the particular case.</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>See above. The RB has to apply the right instrument for the situation and the goal.</p>

POLAND

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Art. 3c) The President of the UTK considers complains of: 1) applicants for: a) network statement b) access to the rail infrastructure, including capacity allocation c) rail infrastructure charging system. 2. Railway Undertakings for the access to service facilities as well as calculation and collecting access charges to these facilities 3) Drivers licensing procedures applied by RUs 4) Passengers for breach of their rights in the railway transport. Art. 3e) The President of the UTK, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>The RB is authorized to consider any complaint and take any steps which are necessary to investigate the matter properly. The RB can issue a decision imposing on any party to the claim an obligation to take steps necessary to remedy the situation.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Yes – the President of the UTK issues a decision imposing taking particular steps by the IM or SF operator, e.g. to consider a RUs capacity application.</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>In our practice it is enough to issue a decision imposing on a, e.g. infrastructure manager to change his former decision.</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>“Appropriate measures” as defined by Article 56.9 may be of application to any infrastructure (rail of service facility) which isn't private, but also when a RB decides to verify whether the particular infrastructure was correctly defined as “private”. In case of any infringements UTK is authorised to take a decision imposing any measures considered necessary in particular case.</p>

PORTUGAL

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Decree-Law 217/2015 (article 56.º, paragraphs 11) and 12)). “Candidates (as defined by Article 3.º paragraph 19 of Directive 2012/34) may appeal to the Portuguese RB if they consider to have been treated unfairly or discriminatory or to have suffered any prejudice, in particular, by decisions taken by the infrastructure manager or, where appropriate, by the railway undertaking or the operator of service facility with regard to: a) the network directory in its provisional and final versions; b) the criteria established in the network directories; c) the process of allocating capacities and their results; d) the price system; e) the level or structure of user charges for the infrastructure that they have to pay or that may have to come to pay; f) the provisions on access, g) the access to services and their charging.”</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Broad discretionary powers</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Corresponds to Article 56.º paragraph 13 Decree-Law 217/2015). “Without prejudice to the powers of the Competition Authority, the Portuguese RB shall, if necessary, adopt adequate measures to promote the application of the principle of non-discrimination between candidates, respect for the undistorted competition in markets and other undesirable situations for the railway sector.”</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No, there’s no definition of “appropriate measures” in PT legislation transposing Directive 2012/34.</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Up to now, PT RB has already adopted four decisions based on appeals from railway undertakings. http://www.amt-autoridade.pt/decis%C3%B5es/decis%C3%B5es/diret%C3%B3rio-da-rede-2017-decis%C3%A3o-relativa-ao-recurso-apresentado-pela-cp-carga-log%C3%ADstica-e-transportes-de-mercadorias-sa/ http://www.amt-autoridade.pt/decis%C3%B5es/decis%C3%B5es/diret%C3%B3rio-da-rede-2017-decis%C3%A3o-relativa-ao-recurso-interposto-pela-fertagus-travessia-do-tejo-transportes-sa/ http://www.amt-autoridade.pt/decis%C3%B5es/decis%C3%B5es/diret%C3%B3rio-da-rede-2016/ http://www.amt-autoridade.pt/decis%C3%B5es/decis%C3%B5es/diret%C3%B3rio-da-rede-2015/ Available also at DAREBO</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations,</p>	<p>All the examples given, plus warnings and admonitions; guidelines. PT RB can also apply fines and other administrative sanctions if there’s any breach of contract or of the law.</p>

imposition of compulsory wholesale access/services, etc..	
In which areas the imposition of "appropriated measures" as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.	All the examples given, plus ...

ROMANIA

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Law 202/2016 , article 56, paragraph 2: „Without prejudice to article 46(6), the National Railway Supervision Council shall analyze and decide on the complaint made by any applicant who considers believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or where appropriate the railway undertaking or the operator of a service facility concerning:</p> <ul style="list-style-type: none"> (a) the network statement in its provisional and final versions; (b) the criteria set out in the network statement; (c) the allocation process and its result; (d) the charging scheme; (e) the level or structure of infrastructure charges which it is, or may be, required to pay; (f) arrangements for access in accordance with Articles 10 to 13; (g) access to and charging for services in accordance with Article 13. <p>(3) In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the National Railway Supervision Council shall either confirm that no modification of the infrastructure manager's decision is required, or it shall require modification of that decision in accordance with directions specified by the regulatory body.</p> <p>(3) Where a complaint is lodged against the refusal to grant infrastructure capacity or the terms of an offer of capacity, the National Rail Supervisory Board shall consider the appeal and either confirm that the decision of the Infrastructure Manager remains unchanged, or request changing that judgment.</p> <p>(4) When analyzing complaints, the National Railway Supervision Council has the following attributions:</p> <ul style="list-style-type: none"> a) to ask for relevant information and/or documents and initiate consultations with all relevant parties, within 30 days from the receipt of the complaint; b) to take a decision within a maximum of 40 days of receipt of all the information and / or documents necessary for the analysis and to notify the parties of its reasoned decision; c) to impose by decision measures to remedy the situation, if it is found that the applicant was treated unfairly, has been discriminated against or wronged in respect of one or more of the elements provided in paragraph (2).”
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market</p>	<p>Art 56, paragraph 6 <u>“Without prejudice to the powers of the Competition Council in Romania, related to the application of the provisions of the Competition law, ensuring the competition in the railway services markets, the National Railway Supervision Council has the competence:</u></p>

<p>distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p><u>a) to monitor the situation of competition in the railway services markets and, in particular, to control the aspects referred to in paragraph (2) to prevent discrimination against applicants;</u> <u>b) verify in particular whether the network statement contains discriminatory clauses or creates discretionary powers of the infrastructure manager that could be used to discriminate against applicants.</u> <u>(7) In carrying out the duties mentioned in paragraph (6), the National Railway Supervision Council may, by decision, impose measures to correct the situation.</u></p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p><u>No</u></p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Up to now, <u>the National Railway Supervision Council has adopted two decisions based on appeals from railway undertakings:</u> 1.Measures for the IM within the allocation process 2.Measures referred to charges applied by the IM within service facilities and the reasonable profit applied</p> <p>http://www.consiliulferoviar.ro/uploads/news/id214/Decizie_CNSDF_ref_caz_Timisoara_Nord-Jimbolia_finalizata_ex1.pdf</p> <p>http://www.consiliulferoviar.ro/uploads/news/id215/Decizia_Tehnocrans_20122017.pdf</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p><u>On case by case bases there could be: binding directions, imposition of specific measures, recommendations, penalties/fines, market surveys and studies with specific recommendations.</u></p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p><u>This should be a broad interpretation, which include any area of the railway sector.</u></p>

SLOVENIA

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>The regulatory body shall consider any complaints and, as appropriate, shall request for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints no later than six weeks after receipt of all relevant information.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>The regulatory body shall consider any complaints and, as appropriate, shall request for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints no later than six weeks after receipt of all relevant information.</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Without prejudice to the powers of the competition authority, the regulatory body shall monitor, ex officio, the competitive situation on the market for railway services, in particular by verifying the conditions referred to in paragraph 1 of this Article with intention to prevent discrimination against applicants. In the event of discrimination of applicants, market distortions or any other undesirable developments in this market, in particular, with regard to the acts, procedures and decisions referred to in paragraph 1 of this Article, it shall take measures to eliminate or prevent them.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>RB has a duty to monitor situation on the market for railway services and, in the event of detection of an irregularity, to determine, at the discretion, measures to eliminate them.</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Decision regarding train delays in rail freight terminal Koper</p>
<p>In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>In our view, it is a very broad interpretation. In our national Railway Transport Act we have a provision “RB take measures to prevent... “ (deleted “appropriate”).</p>
<p>In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>In our view they can be in all areas of regulation of the rail services.</p>

SPAIN

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>The regulatory body shall consider any complaint of the railway undertakings or applicants about the following issues related to the IM or other railway undertakings or applicants:</p> <ol style="list-style-type: none"> 1. The content and application of the Network Statement 2. Capacity-allocation procedures and results 3. The level, structure or application of charges 4. Any discrimination of other railway undertaking or applicant in the access to infrastructure or its services 5. Delivery of services in international railway freight corridors 6. The regulatory body shall cooperate with the regulatory bodies of other Member States in the complaints related to an international train path <p>The complaints shall be filed before one month since the facts happened</p> <p>The regulatory body shall adopt, at the request of any of the parties, a resolution to settle the complaint as soon as possible and, in any case, before six weeks since all relevant information was received.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<ul style="list-style-type: none"> - Limited scope: <ul style="list-style-type: none"> o restricted to some of the issues listed in article 56.1, not “any complaint” o restricted to issues related to the IM or other railway undertakings or applicants, not service facilities operators - The complaint has a limitation period of 1 month since the facts happened (not include in the Directive)
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Not directly transposed</p> <p>We rely on a broad interpretation of other articles to understand we have similar powers to the ones envisaged in article 56.9. These articles are:</p> <ul style="list-style-type: none"> - The regulatory body shall safeguard supply plurality in railway services, as well as ensure they are provided in an objective, transparent and non-discriminatory manner - The regulatory body shall guarantee the equality between railway undertakings and between applicants on the access to the railway services market <p>However, this approach has still to be tested in courts.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>We rely on a broad interpretation of other articles to understand we have similar powers to the ones envisaged in article 56.9. However, we still do not have the provision to decide on “appropriate measures”. According to our legal interpretation, “appropriate measures” imply taken decisions that could lead to compulsory access or imposition of ex ante obligations.</p>
<p>Does your RB have a definition of what constitutes an “appropriate measure” in the light of Article 56.9?</p>	<p>No</p>
<p>In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?</p>	<p>Actually, we do not have the provision to decide on “appropriate measures”. However, thanks to a broad interpretation, we have taken a decision regarding train drivers in the following case: The incumbent, with around 97% of all the train drivers and with much better employment conditions than private firms, had not trained enough train operators of its own for several years. Thus, the incumbent decided to organize a selection process, many of the</p>

	<p>alternative RUs' train drivers left their companies to assist to the selection process and, eventually, incorporate to the incumbent. Between 17 and 40% of the train drivers left their companies to go the incumbent. This caused strong operational problems on these companies, which could not replace their train drivers easily, because the training process lasts for more than a year.</p> <p>In consequence, CNMC adopted a decision imposing the following obligations on the incumbent:</p> <ul style="list-style-type: none"> i) to publish annually its train drivers' necessities, to be sure it trains enough of them; ii) announce any selection process 3 months prior to its start and <p>In the case that more than 20% of a company's train operators leave it, the incumbent will be forced to grant access to traction services, with charges related to costs, for over three months.</p> <p>Link with the decision and the press release (in Spanish): https://www.cnmc.es/novedades/2018-01-10-la-cnmc-fija-condiciones-renfe-para-que-sus-empresas-competidoras-puedan</p>
<p>In your view, which are the types of measures that might be considered as "appropriate measure"? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..</p>	<p>In our view, it should be a broad interpretation, including even binding directions, as well as recommendations and imposition of compulsory wholesale access/services.</p>
<p>In which areas the imposition of "appropriated measures" as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.</p>	<p>Again, in our view, it should be a broad interpretation, which include any area of the railway sector.</p>

SWEDEN

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>This article (and article 56.1) is implemented in the Swedish Railway Act (2004:519) chapter 8 section 9: http://rkrattsbaser.gov.se/sfst/adv?fritext=&sbet=2004%3A519&rub=&org=&upph=false [not an official translation]</p> <p>“A railway company or any other applicant is allowed to refer disputes to the supervisory authority (the Swedish Regulatory Body) as to whether the decision of an infrastructure manager or an operator of a service facility according to this law is in accordance with chapter 5, 6 or 7 in this act and the regulations issued according to these chapters. The supervisory authority shall decide as soon as possible. The decision must be announced no later than six weeks from all relevant information in the dispute has been submitted.”</p> <p>Explanation: Chapter 5 The right to perform and organize traffic on railway infrastructure, Chapter 6 Allocation of infrastructure capacity and the supplying of service facilities, Chapter 7 Charges.</p> <p>Chapter 6 includes i.e. the following provisions: An infrastructure manager is required to process one application for infrastructure capacity from the one which according to Chapter 5 have the right to perform or organize traffic in Swedish rail network and that in a competitive neutral and non-discriminatory means of charging it infrastructure capacity in accordance with the provisions of this law.... The service provider shall in a non-discriminatory way allow rail companies and other applicants access facilities for services and access to services provided in these facilities (basic services).</p> <p>Chapter 7 includes i.e. the following provisions: An infrastructure manager shall take out competition-neutral and non-discriminatory fees for the use of rail infrastructure. Fees for railway services and for use of Railway infrastructure in the service facility shall be non-discriminatory.</p> <p>The right to request information and the demand to take action is regulated in chapter 8 section 4 in the Swedish Railway Act:” The supervisory authority may decide about injunctions and prohibitions that is necessary for the compliance with this Act law or conditions issued according to this Act. Injunctions and prohibitions may be combined with fines.”</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Wide powers</p>
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>Swedish Railway Act (2004:519) chapter 8 section 1 http://rkrattsbaser.gov.se/sfst/adv?fritext=&sbet=2004%3A519&rub=&org=&upph=false</p> <p>The supervisory authority shall supervise compliance of the law and the regulations and conditions issued in accordance with the law.</p> <p>http://rkrattsbaser.gov.se/sfst/adv?fritext=instruktion+f%C3%B6r+Transportstyrelsen&sbet=&rub=&org=&upph=false</p> <p>Regulation (2008:1300) with instructions for the Transport Agency section 8: The Transport Agency shall in addition to its supervision according to Railway Act (2004: 519) monitor the markets for rail services, including the markets for rail transport, works efficiently from one competition perspective.</p>

	As mentioned above the right to request information and to demand action is regulated in chapter 8 section 4 in the Swedish Railway Act: "The supervisory authority may decide about injunctions and prohibitions that is necessary for the compliance with this Act law or conditions issued according to this Act. Injunctions and prohibitions may be combined with fines."
MONITORING FUNCTION <i>Your interpretation – powers of the RB</i>	Wide powers
Does your RB have a definition of what constitutes an "appropriate measure" in the light of Article 56.9?	No
In your regulatory intervention, have you already taken a decision imposed "appropriate measures" based on this article? Could you list or provide links to such decisions?	In a complaint we have decided that the IM must withdraw an allocated train path (TSJ 2016-4922) https://www.transportstyrelsen.se/globalassets/global/jarnvag/beslut/gc-tvist-tsj-2016-4922.pdf
In your view, which are the types of measures that might be considered as "appropriate measure"? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..	This should be left broad and discretion should be available on a case by case basis
In which areas the imposition of "appropriated measures" as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.	This could apply to any area of regulation, this should be left to the discretion of the RB.

UNITED KINGDOM

<i>Article in Recast</i>	<i>Domestic legislation</i>
<p>APPEAL FUNCTION The regulatory body shall consider any complaints and, as appropriate, shall ask for relevant information and initiate consultations with all relevant parties, within one month from the receipt of the complaint. It shall decide on any complaints, take action to remedy the situation and inform the relevant parties of its reasoned decision within a pre-determined, reasonable time, and, in any case, within six weeks from receipt of all relevant information.</p>	<p>Article 32 of domestic regulation - appeals to the regulatory body https://www.legislation.gov.uk/uksi/2016/645/contents/made ... an applicant has a right to appeal to the ORR if it believes it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager, an allocation body, a charging body, a service provider, or as the case may be, a railway undertaking concerning any matters described in paragraph 2.</p> <p>32.5 ... , the ORR must— (a) as appropriate, ask for relevant information and initiate a consultation with the relevant parties within one month of the date of receipt of the appeal; (b) within a predetermined and reasonable time, and, in any case, within six weeks of the date of receipt of all relevant information ... (i) make a decision; (ii) inform the relevant parties of its decision and the reasons for that decision; (iii) where appropriate, issue a direction to the infrastructure manager, allocation body, charging body, service provider or, as the case may be, railway undertaking, to remedy the situation from which the appeal arose; and (iv) publish the decision.</p>
<p>APPEAL/COMPLAINT FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>Wide powers to direct parties following an appeal (ie complaint) i.e. if party believes it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager, an allocation body, a charging body, a service provider, or as the case may be, a railway undertaking concerning any matters regarding:</p> <ul style="list-style-type: none"> - network statement - information that must be included in network statement - allocation processes or its result - charging scheme, charging system - level or structure of infrastructure charges or their principles - arrangements for access - access to and charging for services
<p>MONITORING – FUNCTION/EX OFFICIO Without prejudice to the powers of the national competition authorities for securing competition in the rail service markets, the regulatory body shall, where appropriate, decide on its own initiative on appropriate measures to correct discrimination against applicants, market distortion and any other undesirable developments in these markets, in particular with reference to points (a) to (j) of paragraph 1.</p>	<p>UK: article 34 – Monitoring the rail services markets https://www.legislation.gov.uk/uksi/2016/645/contents/made 34.3- The ORR must, where appropriate and on its own initiative, give appropriate directions to correct: (a) discrimination against applicants; (b) market distortion; or (c) undesirable developments in relation to the competitive situation in the rail services markets, in particular with reference to the matters referred to in regulation 32(2). 34.4 Without prejudice to the right of any person to make an application to the court under Part 54 of the Civil Procedure Rules 1998, it is the duty of any person to whom a direction is given under paragraph (3) to comply with and give effect to that direction.</p>
<p>MONITORING FUNCTION <i>Your interpretation – powers of the RB</i></p>	<p>UK: Broad interpretation - Wide powers to decide and give directions, as well as enforce decisions.</p>

Does your RB have a definition of what constitutes an “ appropriate measure ” in the light of Article 56.9?	No
In your regulatory intervention, have you already taken a decision imposed “appropriate measures” based on this article? Could you list or provide links to such decisions?	No – We have not needed to do so. We tend to use the powers that are already available to us under the Railways Act, or under the Consumer or Competition act as we are both competition and consumer authority for rail
In your view, which are the types of measures that might be considered as “appropriate measure”? Some examples could be, for instance, binding directions, recommendations, imposition of compulsory wholesale access/services, etc..	This should be left broad and discretion should be available on a case by case basis.
In which areas the imposition of “appropriated measures” as defined by Article 56.9 may be of application? Some examples could be, for example, retails conditions of incumbent on freight and passengers market, rolling stock, access to workshops, etc.	As this could apply to any area of regulation, this should be left to the discretion of the RB

