

Independent Regulators' Group – Rail

IRG–Rail

Subgroup Access to Service Facilities

Compilation of national definitions for heritage railways

I. Purpose and background of the document

1. IRG-Rail is committed to promote the sharing of expertise and experiences between Regulatory Bodies (RB).
2. Directive 2012/34/EU places a strong focus on service facilities and rail-related services, acknowledging their importance for the railway market. Implementing Regulation (EU) 2017/2177 on Access to service facilities and rail-related services [hereafter: the Implementing Regulation (IR)] lays down the details of the procedures to be followed for access to service facilities and supply of rail-related services.
3. IRG-Rail's Subgroup 'Access to Service Facilities' aims to support the transport market's demands for access to rail-related services by contributing to the implementation of Directive 2012/34/EU and the IR.
4. In order to avoid disproportional burdens for service facility operators (SFOs) with minor importance, the IR provide a possibility for RBs to exempt SFOs from all or some of the provisions of that Regulation, on a case-by-case basis.
5. Article 2 (1) of the IR states that SFOs *'that exist solely for use by heritage railway operators for their own purposes'* may request to be exempted from the application of all the provisions of the IR.
6. SFOs shall submit their duly substantiated requests for exemption to the RB.
7. Interpreting the term *'heritage railway operators'* is crucial for making decisions on exemptions, based on article 2 (1) in the IR.
8. This paper aims to guide the RBs in their tasks by learning from existing definitions of 'heritage railways' (and similar terms), used in related railway regulation or governing documents in the Member States (e.g. for licensing or classification of railway infrastructure and rolling stock). The intention is to present a compilation of national definitions and practices that RBs can use as a common basis to determine the scope of 'heritage railway operators', when assessing individual cases of requests for exemptions under article 2 (1).
9. IRG-Rail believes that a wide and multifaceted understanding of 'heritage railways' will contribute to effective and better harmonised decisions for exemptions.
10. IRG-Rail will review and update the list of definitions when necessary.

II. Introduction

11. Railway regulation is, generally speaking, designed for commercial transports, run with standard rail vehicles on the main networks. Exemptions, or special rules, may apply in certain circumstances. For example for stakeholders with minor railway businesses, infrastructure or activities aimed for special purposes, on separate networks etc.
12. In some railway regulations terms such as 'heritage', 'museum/museal' or 'historical' are used to define, exclude or distinguish specific requirements on railways, vehicles, operators or transports with deviating purposes or characteristics.

13. IRG-Rail recognises existing definitions and practices for interpreting railway regulation, where such terms appear, as valuable sources of information for making decisions based on article 2 (1) in the IR. The definitions could also be useful in other contexts.
14. To share experiences from different countries, IRG-Rail has made a brief survey, among its members, aimed to compile and present available definitions related to 'heritage railways'.

III. Scope

15. To present a collection of definitions related to 'heritage railways', derived from national regulation or governing documents in the different Member States, with the primary objective to provide guidance to RBs for making decisions on exemptions from the IR, based on article 2 (1).
16. The wording 'heritage railways' (used in the title of the survey) should be understood in a wide sense; referring not only to infrastructure but also to vehicles, operators, transports etc.
17. Definitions should not be restricted to the word 'heritage'. Definitions for related terms, e.g. 'museum' or 'historical' are likewise important in this context.
18. IRG-Rail does not perform the survey with the goal to produce a common definition for 'heritage railway operator', but rather to get a view of different approaches.

IV. Method

19. In December 2017 members of IRG-Rail's Subgroup 'Access to service facilities' were asked to seek for definitions of 'heritage railways' or 'heritage railway operators' in their national regulations, or other governing documents, and send them to the co-chairs of the group (in English), with references to relevant sources.
20. At a group meeting in February 2018, the findings from nine IRG members were presented and discussed. The group considered the initial results useful and agreed to move on and present the definitions in a report, aimed to inspire and guide RBs in setting up relevant definitions for making decisions on exemptions based on article 2(1) in the IR.
21. In total 18 IRG members have responded to the task. Eight members have replied that they do not have any definitions in their national Railway Act or other relevant regulation. Two of these (AT and PT) have, nevertheless, presented national practices related to 'heritage railways'. Accordingly, the definitions and practices presented in this report originate from the RBs in ten different countries.

V. Overview of existing definitions

IRG Member	Definition	Source
Austria (AT)	<p>Heritage railway: None (Railway Act)</p> <p>So called 'heritage railways' are either isolated – and not subject to regulation – or licensed as non-public infrastructure within the category of industrial</p>	

	sidings. The operators are usually fully integrated and have no obligation to provide regular services; the purpose is for tourism only. They have an operating license under the Event law. This can be regarded as a kind of definition for 'heritage railway'.	
Belgium (BE)	None	
Switzerland (CH)	<p>Historical vehicles:</p> <ul style="list-style-type: none"> - Typical rolling stock, put into operation in CH at least 30 years ago (in original state or modified), - The vehicle have widely been withdrawn from regular services, - Main purpose for operating the vehicle: Keeping old technologies operational for publicity. 	Guideline ('Richtlinie') of the Ministry (3 rd level regulation) that complement and explain the terms in the national Railway Act (1 st level) and its Ordinance (2 nd level)
Germany (DE)	None, see point 32.	
Denmark (DK)	<p>Heritage railway:</p> <p>Railways, that preferably through a limited passenger carriage, are operated to accommodate historical railway and tourism values, and not primarily intended to cater for transport needs.</p>	Railway Act
Spain (ES)	<p>Historical/heritage traffic:</p> <p>Locomotives and trains composed of materials classified as historical, with or without passengers, whose primary justification and ultimate purpose is to undertake a historic cultural activity in which the movement of the mentioned vehicles are means to the correct conservation and diffusion of the rail heritage. These circulations, given that their objective is not the supply of passenger transport service, will be subject to their own specific regulation.</p>	Transport Ministry Decision FOM/1403/2013
Finland (FI)	<p>Museum traffic:</p> <p>Small scale operation by means of museum rolling stock, where the goal of the organization in its operation is not to make business profit.</p> <p>A safety certificate is required for operating museum traffic, but not an operating license.</p> <p>Museum railway:</p> <p>Tracks where only museum traffic can be operated, and no other passenger nor freight traffic is allowed.</p>	<p>Railway Act, § 2 (definitions), point 5</p> <p>Railway Act, § 32 a</p>
Hungary (HU)	<p>Museum railway:</p> <p>A museum, museal institution, association or railway undertaking in accordance with the Railway Act that operates railway infrastructure of museal character within its area and provides railway passenger transport with railway vehicles of</p>	Railway Act

	museal character.	
Croatia (HR)	None	
Italy (IT)	<p>Historic railway: None</p> <p>Historical vehicle: a) Rail vehicles disused for commercial purposes, and at least 50 years old or whose first prototype entered into operation at least 25 years ago, which, by virtue of their particular technical, aesthetic and industrial characteristics bear witness to the evolution of the railway sector. b) Steam locomotives.</p> <p>Tourist railway: Closed or disused railway lines with a special value for culture, landscape and tourism, which may be used and valorised, if the related costs are covered.</p>	National Law 128 of 2017
Lithuania (LT)	None	
Netherlands (NL)	None	
Norway (NO)	<p>Heritage railway: Railway where the purpose is not freight or passenger transport but a demonstration of railway, vehicle or similar from a given period of time. The demonstration of the business can take place by transporting goods or persons.</p>	Regulation no 1574 of 10 December 2014, § 3 g
Poland (PL)	<p>Historical vehicle: a) Included in the inventory of museums or the registers of monuments (on the basis of separate regulations) b) steam locomotive operated before 14 November 1997, or c) meeting at least one of the following conditions: - unique design features or documenting certain stages of railway technology development, - associated with historical events or was used only for tourism, demonstration or recreational purposes.</p> <p>Historical vehicles are exempted from the interoperability and EVN regulations.</p>	<p>Railway Act, Article 4 Paragraph 6h</p> <p>Railway Act, Article 2 Paragraph 9</p>
Portugal (PT)	None, see point 33.	
Slovenia (SI)	None	
Sweden (SE)	<p>Heritage railway operator: Operators who can prove that they are exclusively engaged in cultural historical activities by rail or tram, lack profitability and do only conduct traffic to a limited extent.</p>	RB's charging scheme

	<p>Heritage/museum vehicles: Vehicles used exclusively in cultural historical activities... same as above.</p> <p>Heritage/museum railway: Track infrastructure used exclusively in cultural historical activities... same as above.</p>	
United Kingdom (UK)	<p>Railway Act 1993 – no definition.</p> <p>ORR licences heritage railways, but has no straightforward way to define or classify them. 'Heritage, preserved or tourist railways that are physically or operationally separate from the mainline are likely to qualify for licence exemption.' Operators not needing a safety mainline certificate (always run below 40 kmph on their own network) is an indicator they should be exempted from operator licensing requirements.</p> <p>Heritage Railway: A railway which is operated to</p> <ul style="list-style-type: none"> a) preserve, re-create or simulate railways of the past or b) demonstrate or operate historical or special types of motive power or rolling stock <p>and is exclusively or primarily used for tourist, educational or recreational purposes.</p> <p>The definition is not 'water tight' on its own. In practice there is a spectrum of services, but basically it is 'heritage' if it is; standalone, not on shared network and separate from the mainline on a day to day basis and is historical in nature, special and used by tourists, education or recreational.</p> <p>Indicators of not being heritage: on mainline or shared network, fulfils public service obligation, part of national ticketing scheme, in national rail timetable, charter trains on national mainline or used primarily by people wishing be transported between locations (e.g. commuters).</p>	<p>The Health and Safety Regulations 2006</p> <p>Link to RSD heritage railways webpage: http://orr.gov.uk/about-orr/who-we-work-with/railway-networks/minor-and-heritage-railways</p>

VI. Findings of the survey

22. Seven countries (AT, DK, FI, HU, NO, SE and UK) have provided definitions referring to heritage or museum 'railways'. In five countries (DK, FI, HU, NO and UK) these definitions are stipulated in the Railway Act or national law. The scope of the definitions of heritage or museum 'railways' differ. When translated into English it is sometimes difficult to clearly understand whether these definitions refer to the infrastructure, transports, organisations operating the transports – or possibly all.
23. Historical 'vehicles' are defined in four countries (CH, IT, PL and SE). In IT and PL these definitions are kept in national law. In addition to the age of the vehicle, special

values of the vehicle itself, in terms of design or technical characteristics, are also being considered in IT and PL.

24. Historical or heritage 'traffic' or 'operation' are defined in three countries (ES, FI and SE). In ES and FI these definitions are found in the Railway Act or national law.
25. In total, the available definitions are found in the Railway Act or national law in seven countries (DK, FI, HU, IT, NO, PL and UK) and in secondary regulation in two more countries (CH and ES).
26. In some countries, the lack of definitions is because formally no such infrastructure or transports exist. Heritage transports might occur on conventional lines under normal conditions (HU and SI) or on railway infrastructure that is exempted from regulation (AT, HU, LT, SI, UK), because it is isolated from the main network or due to technical characteristics (e.g. non-standard gauge). In some countries, legislation provides for a differentiation between infrastructure types (e.g. main/local/extraordinary infrastructure) which can have an effect on the 'intensity' of regulations applicable, making further definitions obsolete. This is the case in NL. Another example comes from the UK where the Railways Order 1994 exempted assets not owned by NR or TfL before privatisation (most heritage railways). It also exempts various types of assets e.g. railways in museums or non-standard gauge.
27. Definitions on heritage 'traffic' and 'vehicles' often refers to tourism or historic/cultural activities. This is the case in AT, PL, DK, ES, SE and UK. ES and SE, however, advocate the importance to differentiate between heritage (historical protection) and tourist services.
28. In AT, DK, ES, NO and UK the spirit of the definitions states that the objective of heritage transports is not the supply of normal passenger transport services (e.g. commuters). In CH the definition says that heritage vehicles should be widely withdrawn from 'regular services'.
29. In DK, FI and SE the definitions only allow for small scale operation. In FI and SE heritage operations cannot aim for business profits.

VII. Additional information

30. In some countries (AT, FI and UK), heritage transports use no, or special, operating licenses.
31. SE RB will develop the definition of heritage vehicles before new national legislation (implementing the fourth Railway Package) enters into force, in June 2019.
32. In DE there is no legal definition for heritage railway, but exemption for service facilities when used solely for the purpose of the exhibition of rolling stock. In general, when it has the characteristics of a museum.
33. In PT no specific legislation exists concerning heritage/historical railways. However, some Portuguese railway features may be considered historical, regarding the rolling stock (steam engines) and narrow gauge networks, which are currently used in everyday rail activities (tourism). Therefore, such rail operation does not require specific licensing and takes place in the common railway legal framework.

VIII. Conclusions

34. There is a wide diversity among the compiled definitions on 'heritage railways'. This is not necessarily negative. IRG-Rail is convinced that the list of collected definitions will serve its purpose and provide the RBs with a wide range of examples ('flavours'), that can be applied in different settings to support them in their task to identify 'heritage railway operators', upon assessing requests for exemptions under article 2(1) in the IR. Or, to establish new definitions in Member States that have not yet done so.
35. For the time being, IRG-Rail does not find it necessary nor feasible, to establish common definitions related to 'heritage railways'.
36. IRG-Rail acknowledges the benefits of reviewing and updating the list of definitions when necessary.