

Independent Regulators' Group – Rail

IRG-Rail

Work Programme 2021

November 2020

IRG-Rail is the network of independent rail Regulatory Bodies comprising 31 European countries. The overall aim of IRG-Rail is to facilitate the creation of a single, competitive, efficient and sustainable internal railways market in Europe. IRG-Rail acts as a platform for cooperation, sharing of best practices on regulatory issues and promotion of a consistent application of the European regulatory framework.

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I. INTRODUCTION

At the time of this writing, the rail market situation is in many ways worrying. It is likely that for 2020, history books will record as the main fact, the COVID-19 pandemic and the economic impact of it. This is particularly true when one sees the decrease of transport services in Europe and the economic uncertainties that strike economic stakeholders and today's citizens lives. These circumstances risk jeopardizing the ambitious European plan to give to the rail sector enough resources and opportunities to reach the Green Deal goals.

To tackle those adverse consequences, two attitudes are foreseeable. The first, could be to consider that the goals of development of the rail passenger and freight markets have to be revised, cutting back the modal shift aims. The second, could be to consider that this crisis is an opportunity to move towards alternative forms of a more sustainable transport system which meets the needs and wishes of people. In this regard, IRG-rail can only support all efforts to maintain an ambitious development target for the rail sector.

Future growth of passenger and freight markets requires fundamental changes from all stakeholders, including the Regulatory Bodies, in order to guarantee and improve the attractiveness of rail services. This challenge is huge because it does not concern only the economic situation or technical issues. It also concerns how we should try to relate to the future. It is reasonable to consider that the necessary improvements should benefit all stakeholders, especially those committed to innovation and development. Today, policy makers, the industry, train operators, infrastructure managers and service facilities providers are all directly involved in this development process.

As the organisation of European rail Regulatory Bodies, IRG-Rail is committed to fostering an always more consistent approach to the rail regulatory framework in Europe and to developing regulatory best practices. The overarching purpose of the action of IRG-Rail is to contribute to achieving competitive markets in the rail sector in order to improve the quality of services. Considering the limited resources of IRG-Rail, this goal should be best achieved if the priorities of the IRG-Rail Working Groups match the reality of the sector. In this regard, IRG-Rail's multimodality task force will continue its work in identifying relevant regulatory issues with the aim of updating the paper "multimodality: cases, materials and regulatory issues". It is therefore with those concerns that this Work Programme has been adopted at the Plenary Assembly meeting of November 2020.

II. WORK PROGRAMME 2021

1. ACCESS WORKING GROUP

The objectives of the Access Working Group are to focus on all aspects of access to railway infrastructure with respect to market barriers, access restrictions, the promotion of competition, the needs of passenger and freight customers and improved rail performance.

In 2021, the Access Working Group will continue monitoring access issues and will work on the same three main topics as in 2020: TTR, rail-freight corridors (as well as new initiatives for international passenger traffic), and the coordination of temporary capacity restrictions. These topics cover the most important themes in the current European railway market.

a) The TTR project and its pilots

Since 2014, railway stakeholders have been working on a major project under the name TTR (Redesign of the International Timetabling Process). Their aim is to create a new and harmonized process for the allocation of capacity in Europe in time for full implementation in the 2025 Time Table.

From the 2020 Time Table, the project has been running three *pilots* on Rail Freight Corridors in order to test and evaluate the new components in the TTR allocation model. The Access Working Group has been monitoring these pilots from the beginning. This monitoring will continue in 2021 and will also include a new pilot in Austria.

2020 also marked the beginning of the *full implementation* of the TTR project, with the first implementation package due in January. This process will continue with a second implementation package in August 2021. August 2021 also marks the beginning of the Capacity strategy phase for the 2025 Time Table in the TTR model. The Access Working Group will monitor this process for full implementation in dialogue with stakeholders.

In 2020, the TTR project also launched a proposal for new reorganisation based on the concept of *TTR Migration*. Under TTR Migration, a number of infrastructure managers will be first-wave implementers. They have pledged to participate in new *implementation pilots* which introduce on a permanent basis elements of TTR before full implementation. First-wave implementers have also agreed to implement (common) TTR IT systems and launch actions required to cope with national particularities hindering the implementation of new TTR pilots. From now on, the TTR elements will to a large extent be shaped in this first-wave implementation, affecting also countries which are not part of the first-wave implementation. Monitoring TTR migration should be a part of the Access Working Group TTR activities in 2021.

While the implementation of TTR is thus already underway, there remains big questions on how to solve the required *framework conditions* in terms of Legal framework, IT landscape, and

Commercial Conditions. The Access working group will continue to address issues regarding the legal framework in 2021, if required in collaboration with Emerging Legislative Proposals Working Group. The Access Working Group will also continue to engage with the TTR proposals for Commercial Conditions.

Since 2019, the Access Working Group has had a dialogue with RNE, FTE and the Services of the European Commission with the aim to exchange views on the TTR project. Some regulatory bodies have also engaged with domestic parties on the project. This stakeholder dialogue will continue in 2021, if suitable including wider circles of RUs and their associations (ERFA, CER, Allrail) and infrastructure managers.

Deliverables

- Continue the dialogue with RNE, the European Commission Services and other stakeholders (including those representing railway undertakings) on the development of the TTR project with regard to market needs;
- Report on the state of development of the TTR project (pilots, process for full implementation, TTR migration, and framework conditions).

b) Monitoring of Rail Freight Corridors

In 2020, the European Commission launched an evaluation of the Rail Freight Regulation 913/2010/EU, carrying out an examination and an inception impact assessment to find options for a revision of the regulation. During 2021, the Commission intends to continue with a full impact assessment and presumably a draft regulation. This assessment and revision will benefit from an active contribution from regulatory bodies. The Access Working Group will provide opportunity for exchanging views and experiences, and if deemed suitable, identify and express common positions.

Article 20 of the Rail Freight Regulation gives regulatory bodies the duty to cooperate in monitoring the competition in the rail freight corridors. To the extent that the group's resources allow in light of the ongoing revision of the regulation, the Access Working Group will endeavour to provide support to regulatory bodies in order to make this monitoring coherent and effective.

To provide a qualitative basis for this monitoring, the group will continue the work initiated in 2019, when the Access Working Group organised a workshop to share experiences of monitoring Rail Freight Corridors. This exchange has the promise of helping to provide a more coherent and effective monitoring across Rail Freight Corridors.

To provide a quantitative basis for this monitoring, the group will consider to continue the work on Key Performance Indicators (KPIs), which were decided on by IRG-Rail in November 2017. The next step for the group would be to engage with other stakeholders who have similarly set up sets of KPIs to discuss the possibility of aligning or merging the different lists of KPIs.

Recently, there have been several initiatives to improve the conditions for international passenger traffic by train, including direct awards of international night trains, proposals for a corridor approach to international passenger trains, and suggestions for revival of international trains through increased cooperations by RUs. The Access Working Group will keep an eye on this development and, if relevant, include attention to passenger traffic in its work on Rail Freight Corridors.

Deliverables

- Discuss the assessment and revision of the Rail Freight Regulation in the group in order to enable group members to provide better input;
- Exchange experience of RFC monitoring between members of IRG-Rail and, if suitable, with external stakeholders;
- If circumstances allow, organise an IRG Rail Forum with stakeholders on the monitoring of performance of international railway freight transport.

c) Planning Temporary Capacity Restrictions according to the revised Annex VII

The Delegated Decision (EU) 2017/2075 replacing Annex VII of Directive 2012/34/EU has big implications especially for planning, consultation, and international cooperation concerning temporary capacity restrictions. With the 2021 Time Table all rules in the revised Annex have come into force. The rules have already provided to be a driver of change in national and international planning practices, and moreover constitute one building-block for the TTR project.

As a consequence, regulatory bodies could be expected to perform an important role in 2021 in examining and aligning practices for how the rules are applied. Several stakeholders have already started initiatives on the topic. The European Commission has conducted a questionnaire survey on the extent to which the Annex VII rules have been adopted in practice. RNE expect full rollout of their TCR Tool in December 2020 and are working on a report on how to deal with TCRs in the timetabling process. FTE, ERFA and RU Dialogue are also examining implementation. Previous experience suggests that the Annex VII rules raise important issues of interpretation and need for clarification. Regulatory bodies could provide added value by looking further at these detailed aspects of the rules, on basis of experience gained in decisions on complaints and ex-officio investigations.

Directive (EU) 2016/2370 (Fourth Railway Package) has amended article 56 of Directive 2012/34/EU by extending the functions of national regulatory bodies to the treatment of regulatory issues concerning, amongst others, renewal planning and scheduled or unscheduled maintenance. The question of how this has changed regulatory practice could usefully be investigated in conjunction with the implementation of Annex VII rules.

Deliverables

- Conduct an investigation in order to identify aspects of the Annex VII rules which need clarification or where common interpretations are called for;
- Engage with stakeholders to improve the identification of issues to address by RBs;
- Gather member's experiences of the implications of the new mandate to monitor renewal planning and scheduled or unscheduled maintenance, following the implementation into national legislations of article 56, paragraph 1, letter (i) of Directive 2012/34/EU, also with reference to the application of Annex VII of the directive and the management of congested infrastructures;
- Report in a position paper to the IRG-Rail Plenary.

2. SUB-GROUP ACCESS TO SERVICE FACILITIES

This Subgroup works on topics related to the access to the services and service facilities described in Annex II p. 2-4 of Directive 2012/34/EU. While focussing on the topics described in the following paragraphs, the group is continuously listening to the market players and the European Commission and is prepared to prepare information as well as positions for the Plenary, if and when the necessity arises.

Tracks in Ports

The European Sea Port Organization, accompanied by Port of Antwerp and Hamburg Port Authority, raised the question to the European Commission in May 2019, if rail assets in maritime and inland ports, including the tracks, is considered infrastructure or one (or several) service facilities. In November 2020 the group presented an internal interim report including an overview of legal provisions and the regulatory practices regarding classification of tracks in the main maritime and inland port(s) in IRG-Rail member countries to the Plenary. Due to the COVID-19-related restrictions it was not possible to hold the planned workshop to analyse and discuss the findings and possible repercussions, yet. The group intends to have the workshop as soon as the pandemic allows. The workshop will focus on interesting aspects of classification of tracks and rail access in ports in individual Member States as well as the overall results.

Deliverable: Public paper on results from overview and workshop.

Responsibility for Service Facility Descriptions

According to Art. 27 of Directive 2012/34/EU, the network statement shall “contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities or indicate a website where such information is made available”. Infrastructure managers have raised the question of responsibility for the content of such service facility descriptions supplied by third party operators of service facilities for inclusion in the infrastructure managers' network statements.

The group intends to find a common position of IRG-Rail members in this regard, providing the rail market in general and infrastructure managers specifically with legal certainty on the matter.

Deliverable: Public paper on responsibility for Service Facility Descriptions in Network Statements.

Monitoring of exemptions granted under Article 2 Paragraph 2 of Implementing Regulation (EU) 2017/2177

Article 2 Paragraph 2 of Implementing Regulation (EU) 2017/2177 allows for exemptions from the application of the Implementing Regulation subject to a decision of the relevant Regulatory Body. IRG-Rail has developed and published common decision-making principles for the application of the relevant criteria¹. In its first two reports on the topic² IRG-Rail determined that exemptions are requested, and therefore granted, in very few Member States. The common criteria are used for this task and the regulatory bodies that do handle requests for exemptions have developed administrative approaches for the tasks. As the application of the common principles has stabilised, the group intends to continue monitoring the number of cases.

Deliverable: Update of the Report on experience gained from exemptions granted under Article 2 Paragraph 2 of Implementing Regulation (EU) 2017/2177.

Private sidings (subject to availability of SG resources)

According to Annex I of Directive 2012/34/EU, railway infrastructure consists of the items listed in the Annex, “provided they form part of the permanent way, including sidings, but excluding (...) private branch lines or sidings”. A definition of the term “private siding” is not offered in European law. The considerations in recital 12 and the exemption rule in Article 3 par. 3 lit. d) of the Directive seem to lead in different directions. As many service facilities could also be understood to be sidings, with “storage sidings” explicitly mentioned in Annex II, an overview over the national approaches and an analysis of the term and its repercussions on the access to service facilities would help define the scope of regulation.

Deliverable: Analytic paper on the term “private sidings”.

¹ <https://www.irg-rail.eu/download/5/561/IRG-Rail187-CommonPrinciplesongrantingexemptions.pdf>

² 2019: <https://www.irg-rail.eu/download/5/647/ReportonexperiencesregardingexemptionsgrantedunderArticle22ofCommissionImplement.pdf>
2020: <https://www.irg-rail.eu/download/5/741/IRG-Rail208-UpdateoftheReportonmonitoringofexemptionsgrantedunderRegEU2017-2177.pdf>

Template and Common Portal

Under Implementing Regulation (EU) 2017/2177 the market was called to create a template in cooperation with the regulatory bodies for provision of Service Facility Descriptions (SFDs). Such a template was published by RNE on 16 May 2018. IRG-Rail commented on the template in a position paper published on 18 May 2018. In the paper IRG-Rail suggested a revision of the template. In May 2019, the European Commission launched a “Common Portal”, which according to the Implementing Regulation, can be used to publish service facility descriptions. An interim Governance Board was set up, where the IRG-Rail Chairmanship participates as an observer. In 2020 RNE took over the management and development of the Portal from the Commission, with support of UIRR. The Commission guarantees funding for maintaining and developing the Common Portal for a limited period.

The group will continue to monitor the further development and use of the template and common portal and act appropriately, as resources allow. The group relies on continuous information exchange with IRG-Rail's representative in the Governance Board.

Deliverable: Oral updates at the plenaries.

3. EMERGING LEGISLATIVE PROPOSALS WORKING GROUP

In 2021, the focus of the Working Group will continue to be on the implementation and application of European rail transport legislation and in particular on providing input in the development of any emerging legislative instruments. The group will, in cooperation with the Working Groups for charging, access, service facilities or market monitoring, endeavour to contribute to such process based on evidence from regulatory practice. It will also continue to identify and discuss legislative issues of common concern as they arise.

In this regard, the Working Group will:

- monitor and provide input (position papers) to draft legislative instruments and soft measures as and when produced by the European Commission. It will also provide guidance to other IRG-Rail working groups as and when appropriate.

Deliverables:

- Public paper providing overview on availability of common information and through-ticketing systems in relation to article 13(a) of Directive EU 2016/2370.
- address issues of implementation of EU legislation of common concern raised by members of the Working Groups, in particular specific issues of legal or legislative nature. This will include exchanging information and knowledge on implementation

and transposition, reviewing case studies, holding workshops with stakeholders, as well as liaising with other working groups as necessary;

Deliverables:

- Update database on anti-competitive discriminatory practices in the rail sector and organize presentations of cases as necessary;
 - Update overview paper on Economic Equilibrium Methodology.
- at the request of other IRG-Rail working groups, provide at short notice assessments on specific questions of legal nature.

Deliverables:

- If requested by access working group, assess concrete questions of legal nature raised by draft revision of Rail Freight Corridor regulation;
- If requested by access working group, assess concrete questions of legal nature concerning the implementation of TTR and the interpretation on annex VII in the Directive.

4. CHARGES WORKING GROUP

Directive 2012/34/EU on the allocation of railway infrastructure capacity and the levying of charges for the use of the railway infrastructure requires regulatory bodies to ensure non-discrimination on the railway market and, in particular, check whether charging principles are properly applied and separation of accounts is fully respected. In 2020, IRG-Rail will continue to develop an understanding of charging principles across the European rail sector. In particular, it will:

- gather, organize and exchange information on charging issues (e.g. charging principles for the use of infrastructure, incentive regulation, mark-ups for international routes);
- discuss regulatory issues related to the examination of cost components and composition of infrastructure charges, as well as to the assessment of direct costs and mark-ups with a view to developing a common understanding thereof;
- seek to understand the implications for railway charges of the opening of the domestic passenger market.

Deliverables

- Drafting a Paper on market segmentation and the calculation of mark ups.

Should resources allow, the Working Group will address the following topics:

- Start drafting a paper on performance schemes
- Start drafting a paper on direct costs calculation and methodologies
- Exchange with EU Commission on understanding of Long Term Cost
- Main charging units used among IRG-Rail Members-States
- Incentive Regulation
- Meeting with outside stakeholders (e.g. Prime or ERFA) to foster exchange between RBs and the market

5. SUB-GROUP CHARGES FOR SERVICE FACILITIES

a) Background

The sub-group Charges for Service Facilities aims to get a better understanding of the Directive 2012/34/EU on setting charges for service facilities. It also intends to reflect and discuss the problems and decisions of the regulatory bodies when investigating the charges of service facilities. The working group aims to share good practices and tries to give guidance to regulatory bodies, whenever possible.

More specifically, the working group will:

- seek to develop a common understanding of the implementation of EU charging principles for service facilities;
- develop a common position, particularly on the methods for calculating costs for access to service facilities and for providing services.

Deliverables

In 2021, the working group is determined to continue this work by focusing on the topics mentioned below:

- A second report on charges for freight terminals (comparison of charges and charging principles of the basic service of the terminal) with extended content. The first report will be published by IRG-Rail in 2020 for the first time;
- A workshop on exchanging the different experience of the members of IRG-Rail when dealing with reasonable profit (like WACC and CAPM).

Should resources allow it an extra focus will be on:

1. An update of the paper on charges for storage sidings with the extension of the content. An in-depth analysis of charges shall try to explain differences and try to analyze if the storage routines of RUs are affected by charges). This paper was published by IRG-Rail in 2018 for the first time;
2. A first benchmark on the investigation of charges of SFO on the documents and the accounting separation requirements of SFOs;

3. An update of the 2019 paper on charges for passenger stations or on any other further analysis on this topic;
4. An update of the paper on the economic approach of charging principles. This paper was published by IRG-Rail in 2019 for the first time;
5. A first report on charges for marshalling yards.

6. MARKET MONITORING WORKING GROUP

The monitoring reports produced by the Working Group provide annual overviews of the economic conditions and market developments in the railway sector. They also show the development of the European railway market and its competitiveness compared to previous years.

In 2021 the 10th Market Monitoring report will present, as it was the case for previous editions, the main findings of the annual data collection concerning the activities of rail markets in 2020. These findings will of course be significantly affected by the impacts of the COVID-19 pandemic on the overview of the freight and passenger rail activities in Europe in 2020, and over most of statistical indicators collected for this period.

In addition with these regular analysis performed with a similar output as for the 9th edition (publication of a main report presenting annual results at the overall European level, and a Working Document including country specific data), the Working Group proposes to go further for the analysis of the COVID-19 impacts on railway markets, in the continuum of the specific collection of indicators started in mid-2020 to be included as a first “COVID-19 focus” within the 9th report.

Subject to the availability of indicators to be collected during the first semester of 2021, the market Monitoring will publish, in advance in 2021, a “short outlook” of the annual impact of COVID-19 in 2020 over European countries. This data collection should concern a factual analysis about key performance areas such as:

- Operating performance;
- Traffic;
- Punctuality.

Considering the possible availability of more consolidated quantitative/qualitative indicators by the end of 2021 (especially regarding financial indicators), the Working Group could propose an in-depth focus included in the 10th report (to be published in spring 2022), including additional and different indicators from the indicators presented in the annual report, such as:

- additional indicators regarding operating performance and traffic, and temporal analysis over 2020 (summary of the short outlook published at the middle of 2021);
- indicators of punctuality;
- financial indicators (e.g. changes in the levels of RUs/IMs revenues/costs/subsidies);

- qualitative/quantitative indicators of the impact of the COVID-19 pandemic on the global mobility (modal share per country, differentiated impacts on other modes for freight/passenger mobility);
- other measures adopted by the States (e.g. restrictions of capacity; State aids);
- additional impacts observed on the first semester of 2021.

Should resources allow it, other issues have also been proposed by the MMWG and could be submitted as further focus and monitoring analysis in 2021 or 2022 such as:

- a focus regarding the rail network utilization per country, which was proposed in 2020 but postponed due to overload regarding COVID-19's analysis; due to the impact of the COVID-19 crisis, the data collection associated would however need to be performed on a longer period than 2020 to possibly isolate the differentiations on rail network utilization rather than the sole impact of the 2020 sanitary crisis;
- an analysis of the status of Single Wagonload Traffic (SWT) in IRG-Rail countries, with an overview of the volumes and trends for this activity in regards with other freight rail services (intermodal, block train);
- a data collection regarding service facilities: a collection of quantitative indicators to visualize the number and categories of service facilities per country, the market volumes associated. These indicators could be completed by the description of how they are regulated and the comparison of specific issues/barriers among European countries;
- an overview of the application of data driven regulations within IRG-Rail members: sharing of experiences and best practices with the aim of proposing a common methodological framework with goal to increase passenger protection and the quality of service;
- an analysis of rail pricing (passenger fares): pricing practices among European countries, identification and comparison of regulatory settings (ceilings, floors...) per type of services and their impact on the levels and structure of railway undertaking revenues;
- a "coordinated" customer survey: with the aim of comparing rail passenger profiles, journey purposes and modal behaviour within IRG-Rail countries, a coordinated web survey could be designed and simultaneously conducted in each country toward comparable panels of customers.

Additionally, but according as well the resources available and the level of prioritization put on the works and analysis on the COVID-19 impacts, the Working group will investigate the fifth edition of the Glossary of transport statistics (Eurostat, UNECE and ITF) as well as the revision of the Commission's Implementing Regulation (EU) 2015/1100 of July 7th, 2015 on the reporting obligations of the Member States in the framework of rail market monitoring (including its questionnaire for the data collection). Depending on this revision, the Working group will issue a position paper on this subject. In the meantime, if it is necessary to harmonize the common definitions in IRG-Rail's Guidelines on market monitoring with those in the Glossary of transport

statistics, the guidelines will be updated.

Deliverables (without optional tasks to be discussed):

- (April 2021) Publication of the 9th IRG-Rail market monitoring report at the beginning of 2021, with a focus on the impact of the COVID-19 pandemic for European passenger and freight rail markets during the first semester of 2020;
- (July/August 2021) Early publication (“outlook”) of the full-year impact of COVID-19 pandemic in 2020 for the railway sector, to be published at mid-2021, subject to the availability of accurate data in Spring 2021;
- (March/April 2022) Publication of the 10th IRG-Rail market monitoring report at the beginning of 2022, including as a focus an in-depth analysis of the COVID-19 impacts for the all year 2020 (additional indicators bringing complementary analysis to the annual indicators produced for the main report of the COVID-19 impacts among European countries).

ANNEX

Working Groups and Sub-groups

	Name	Co-Chaired by	Contact person(s)
1	Working Group Access	ART-I	Roberto Piazza
		Transportstyrelsen	Gustav Sjöblom
2	Sub-group Access to Service Facilities	Bundesnetzagentur	Ulrike Weyers
		ART-I	Vincenzo Carpinelli
3	Working Group Emerging Legislative Proposals	ORR	Agnès Bonnet
		Bundesnetzagentur	Christian Wolf
4	Working Group Charges	Belgian Regulatory Body for Railway Transport	Rodolphe Duterme
		Bundesnetzagentur	Max Meulemann
5	Sub-group Charges for Service Facilities	CNMC	Alberto Oeo Pizarro
		Schienen-Control	Andreas Himmel
6	Working Group Market Monitoring	ART-F	Anh Lai / Anthony Martin
		AMT	Maria Antonio