

Independent Regulators' Group – Rail IRG–Rail

Final Report: Regulatory practice for classification of tracks in the main maritime and inland port(s) in different European countries

prepared by Subgroup Access to Service Facilities

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Introductory Remarks

This paper shows the national approaches regarding the classification of tracks in ports and points out relevant implications on rail regulation and on other areas.

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1. Introduction

1. The European Sea Port Organization (ESPO), accompanied by Port of Antwerp and Hamburg Port Authority raised the following question to the European Commission at the meeting of the European Network of Regulatory Bodies (ENRRB) in May 2019: Is rail-related infrastructure (rail assets) in maritime and inland ports, including the tracks, considered infrastructure or one (or several) service facility(ies)?
2. Background for this question was ESPO's concern that different classifications of tracks in ports could lead to different preconditions, which could affect the Port Operators in various fields. ESPO pointed out possible repercussions in the areas of charging, investment and safety. Whilst the Port of Antwerp focused on different aspect of the approach regarding autonomous responsibility of the port operator for all tracks within the port area, the Hamburg Port Authority emphasised the impact of whether tracks are classified as railway infrastructure or service facility on possible access to state funding.
3. Potential repercussions could be
 - Depending on the classification of the tracks, state aid might fall under Art. 8 (2) of the Directive 2012/34/EU (the Directive) or Art. 56b of the Commissions Regulation (EU) 651/2014 (block exemption) or might be forbidden with regard to Art. 107 (1) of the Treaty on European Union and the Treaty on the Functioning of the European Union.
 - Planning and allocation of train paths or of capacity in service facilities follows different rules. (See Art. 38 et seq. and Art. 13 of the Directive together with Implementing Regulation (EU) 2017/2177).
 - The rules for the calculation of access charges differ under Art. 31 of the Directive.
 - Safety requirements might differ.
4. Although neither state aid for infrastructure nor - in most member states - safety rules are within the responsibility of Regulatory Bodies (RBs), the IRG-Rail decided to explore the issue of classification of tracks in ports and conducted a survey of the situation in IRG-Rail member countries. The idea was to investigate the national approaches regarding the classification of tracks in ports (see Chapter II.B) and to point out relevant implications on rail regulation and on other areas (see Chapter II.C).
5. This report concentrates on market regulation issues, as indeed not all the regulatory bodies have competence for safety regulation. In case any safety issues are mentioned, in this report they will be clearly defined as related to safety regulation, and without such reference, the scope is merely market regulation.
6. At that point, responses provided by the IRG-Rail members only showed a few examples: In at least one country every part of the rail-related assets (e.g. tracks, ground, buildings, equipment) beyond the transfer point after the main network, including tracks, sidings, cranes, and the connecting lines were known to be considered service facility. In another country, the tracks inside the port were considered railway infrastructure and were operated by railway infrastructure managers. These examples showed that there are differences in the classification of rail assets in ports. The internal research carried out by IRG-Rail in 2019 also highlighted diverging and in part ambiguous classification of rail assets in service facilities. While most of the IRG-Rail members classified ports in

general as service facilities, only half of the IRG-Rail members classified the tracks in ports as service facilities. These findings led to further work.

7. Starting in 2020 two questionnaires building on each other and a workshop helped gathering a general overview and getting a closer look on national approaches. The questionnaires addressed national legal provisions as well as the management of tracks within ports and the regulatory practices regarding classification of tracks in the main maritime and inland port(s) in IRG-Rail member countries. Reasons for differences and possible repercussions of the different approaches to the classification of tracks in ports were also explored.
8. To elaborate the findings from the questionnaires and get a better understanding of national examples, a workshop on the subject "tracks in ports" was held in June 2021. The high rate of participation in the questionnaire (2020: 19, 2021: 20 IRG-Rail members) as well as in the workshop (15 IRG-Rail members) shows the importance of the topic for the IRG-Rail members in Europe. A summary of each presentation from the workshop is attached in the Annex to this report.
9. Both questionnaires and workshop show diverging national approaches based on different port designs, national legal frameworks as well as management and roles of the port authorities, infrastructure managers and service facility operators in the port areas.

2. Classification of tracks in ports

2.1. Legal Basis

2.1.1. Interpretation of Annex I and II of Directive 2012/34/EU

10. According to Art. 13 (1) of the Directive, infrastructure managers shall provide the services of the minimum access package (MAP) referred to in point 1 of Annex II to all railway undertakings on a non-discriminatory basis. This package includes inter alia the use of "railway infrastructure" (Annex II point 1 c). Railway infrastructure consists of items listed in Annex I provided they form "part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings".
11. Art. 13 (2) of the Directive provides that operators of "service facilities" "shall supply in a non-discriminatory manner to all railway undertakings access, including track access, to the facilities referred to in point 2 of Annex II and to the services supplied in these facilities". In Art. 3 (11) "service facility" is defined as "the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II". Annex II point 2 lit. g) includes "maritime and inland port facilities which are linked to rail activities".
12. The legal provisions may be interpreted in different ways. A broad understanding of the term railway infrastructure may be applied depending on the interpretation of Annex I of the Directive. On the other hand there are other tracks in ports that might need to be classified as service facility tracks since Art. 13 (2) of the Directive states access shall be given to service facilities referred to in Annex II no. 2 of the Directive, access, including track access. One of the possible conclusions could be that all tracks within the service facility "port" should be classified as service facility tracks or be treated as such.

13. Because the definition of “service facility” in Art. 3 (11) of the Directive does not refer to the tracks the provision could also be interpreted in the way that the tracks are not part of the service facility at all.
14. In the questionnaires the IRG-Rail members were asked about their interpretation of some terms in Annex I and II of the Directive. The aim was to find out whether different approaches are due to a different interpretation of the law.

2.1.2. Interpretation of “permanent way, including sidings” according to Annex I

15. According to Annex I railway infrastructure consists of a list of items provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings.
16. The IRG-Rail members were asked to describe the regulatory body’s understanding of the term “permanent way, including sidings” considering how the term was translated into national language and where applicable according to the definition in national legislation. The question was included in the questionnaire to find out whether differences in the classification of tracks can be traced back to a different understanding of the term “permanent way, including sidings”. The following table shows the understanding of the regulatory bodies. Not all countries that answered the questionnaire have delivered their understanding because there are countries where neither a definition in national law exists nor - until now – it has been necessary to form a common understanding of the terms.

Country	Understanding of “permanent way”	Understanding of “siding”
Austria	No explicit legal definition. An internal regulation by the IM reads: Main tracks are the station tracks intended for train movements, side tracks are all other station tracks. The continuation of the line tracks in the station are the continuous main tracks.	Tracks within repair yards, railroad depots or locomotive sheds, and private sidings. However, there is no explicit legal definition.
Belgium	There is no legal definition of ‘permanent way’ in Belgian legislation.	There is no legal definition of the term ‘siding’. Our interpretation is that a siding is a part of the infrastructure, and is a side-track next to the main line that can be used as a relief track or to let a faster train pass a slower one.
Bulgaria	No explicit legal definition of “permanent way” in Bulgarian legislation.	No explicit legal definition of “siding” in Bulgarian legislation. It is imposed only a definition for “Storage sidings” – tracks intended for temporary storage of railway vehicles during the period between two journeys.

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Croatia	Main tracks on the “open” railway which serve and are used for train travel. Also, it represents the main through track in stations.	In Croatia these are tracks which are defined as railway infrastructure. They are not used for train traffic but are intended for loading and unloading wagons, for assembling and disassembling trains, for accommodating/garage wagons and other purposes.
Czech Republic	a) a nation-wide rail system, which is a rail system serving international and nation-wide public railway transport (passenger and freight), and is indicated as such, b) a regional rail system, which is a rail system of regional or local importance serving public railway transport and running into nation-wide or other regional rail system,	d) a siding, which is a railway serving the operator's or other entrepreneur's own needs and running into a nation-wide or regional rail system or another siding,
Finland	In general, there is no separate definition of "permanent way" in the national legislation.	In general, there is no separate definition of "siding" in the national legislation.
France	No legal definition In the French version of the Annex I of the Directive, the expression “permanent way, including sidings” is translated by the equivalent of running tracks <u>and</u> sidings (“voies principales et voies de service”)	No explicit legal definition As there is no clear definition of “siding” neither in France nor on the European level, ART-FR could consider that “sidings” refers to tracks that are part of the infrastructure according to Annex I (“permanent way”) but are not running tracks. In France, this term has been historically used by the IM to designate a variety of tracks in very broad understanding of the term “sidings”.
Germany	Permanent way, including sidings is translated as “Haupt- und Dienstgleise” which are terms derived from safety regulation.	The term “Dienstgleis” is not used in German law concerning safety of train operations. The term “Nebengleis” is used, which is anything else but a “Hauptgleis” (§ 4 sub. 11 EBO).

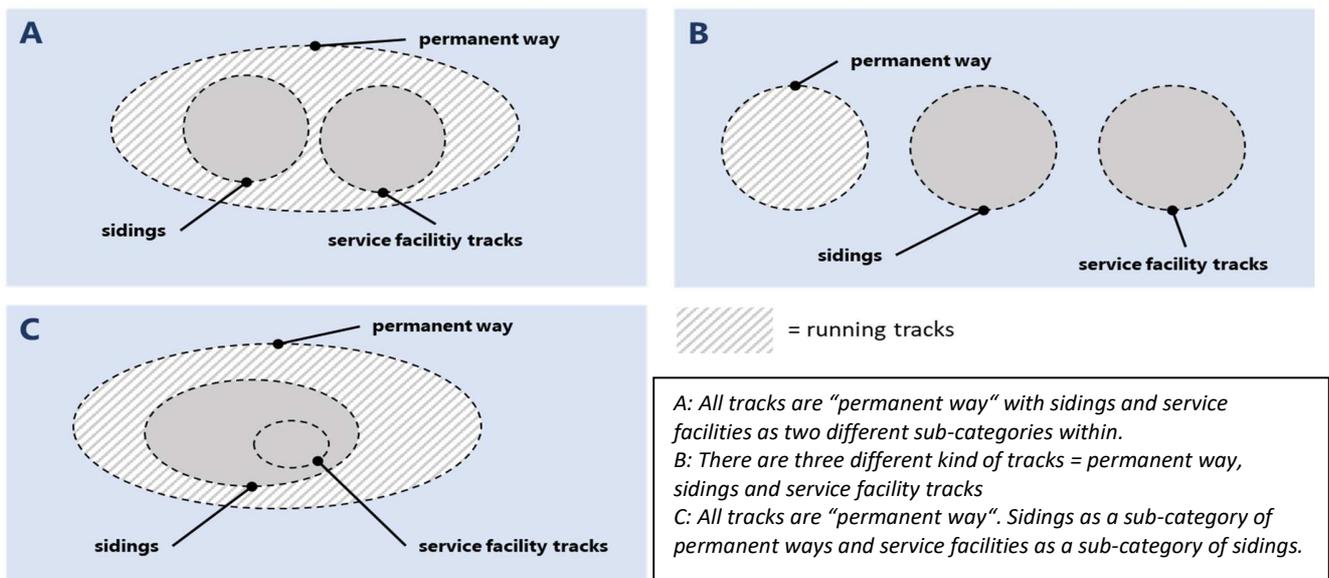
	Permanent way = "Hauptgleise" which means tracks used for running trains from A to B.	It is not clear what is meant by "Dienstgleis" according to the Annex I of the Directive. Therefore also the European term "siding" is unclear.
Hungary	There is no definition for "permanent way" in Hungarian legislation.	There is no definition for "siding" in Hungarian legislation. However the traffic instruction of MÁV (infrastructure manager) defines it as a service station track that cannot be used for train traffic.
Italy	main tracks, namely the tracks involved in trains' circulation (transit tracks and arrival/departure tracks)	service tracks: the tracks used for the siding (parking) of rolling stocks when not in use
Lithuania	There is no definition for "permanent way" in Lithuanian legislation.	In Lithuania sidings are described as a railway tracks intended for activities of natural and legal entities which is directly or through other railway tracks connected with the railway station.
Poland	<p>There is no legal definition of permanent way.</p> <p>In Polish translation of the Directive the expression permanent way, including sidings was translated railway track, including sidings.</p> <p>The expression permanent way, including sidings used in Annex I to the Directive was transposed to Polish Railway Act as railway line, railway siding or other railway track.</p>	<p>In Polish Railway Act the siding is defined as:</p> <p>a railway road designated by the infrastructure manager, connected directly or indirectly to a railway line, for the performance of loading, maintenance or parking of railway vehicles or for the movement and integration of railway vehicles into operation on the railway network;</p>
Portugal	The concept of "Permanent way" of Recast Directive was transposed in our national law – Annex I of Decree-Law 2017/2015, as "main tracks" which means which means in the glossary published by IM "the tracks used by trains in regular service." No explicit legal definition.	<p>The concept of "siding" of the Recast Directive was transposed in our national law – Annex I of Decree-Law 2017/2015, as "service tracks" which means in the glossary published by IM "tracks usually used for shunting movements."</p> <p>No explicit legal definition.</p>
Romania	<p>There is no definition for "permanent way" in Romanian legislation.</p> <p>The concept of "permanent way" of Recast Directive was transposed in our</p>	The concept of "siding" of Recast Directive was transposed in our national law – Annex I of Law 202/2016, as "service tracks".

	national law – Annex I of Law 202/2016, as “railway network”. We understand “permanent way” as railway lines which are part of railway infrastructure.	Under "sidings" we understand side railway lines that are part of railway infrastructure operated by IM with supporting function for railway transport.
Slovakia	<p>We understand “permanent way” as railway lines which are part of railway infrastructure.</p> <p>This railway lines form a transport route for railway vehicles for the purposes of railway transport and are operated by IM.</p>	Under "sidings" we understand side railway lines that are also part of railway infrastructure operated by IM and they have supporting function for railway transport.
Slovenia	<p>In Slovenian version of Annex I of Directive, the term “permanent way” is translated as “upper construction” (=rails, fasteners, sleepers, underlying subgrade). This translation can be problematic, because there is possibility for different interpretations (sidings are consisted of same elements).</p> <p>In our understanding a permanent way is the railway line where trains operate from origin to final destination (=train paths are allocated).</p>	A siding is a railway track for vehicle deposition, particularly on train stations or terminals. In some cases, sidings can be used for “normal” train operations as well (train intersection). There are also private industrial sidings.
Spain	<p>Permanent way are the main tracks (only circulation tracks).</p> <p>It apparently matches with running track according to RE 2019/777.</p>	<p>Sidings included in Annex I are other tracks used to regulate the traffic. To regulate the traffic we use more tracks than the main tracks.</p> <p>There are also other sidings not included in Annex I that are service facilities (storage sidings, tracks to load and unload freight,...)</p> <p>The concept “siding” defined in regulation 2019/777 includes all tracks because it refers to safety regulation (engineering perspective).</p>

<p>Sweden</p>	<p>No explicit legal definition.</p> <p>In the Swedish translation of the Directive '<i>permanent way, including sidings</i>' is, translated to, '<i>track facilities, including sidetracks</i>'. We understand this as <i>all rail assets</i>. Thus, in the Swedish Railway Act, rail infrastructure is defined as (sort of) <i>all rail related assets</i>. One can figuratively say that, all track facilities are 'born' as rail infrastructure. In the next step, if these rail assets are located in a service facility regulation for SFO apply.</p>	<p>No explicit legal definition.</p> <p>Preparatory legal material (proposition 2014/15:120) states that sidings include, but is not equal to, tracks in service facilities.</p> <p>This implies that service facilities is a subset of sidings, whereas any other tracks than the main tracks are sidings.</p>
<p>United Kingdom</p>	<p>No explicit legal definition.</p> <p>The term "permanent way" is defined as the track on a railway. It is the structure consisting of the rails, fasteners, sleepers, and ballast (or slab track), plus the underlying subgrade. In other words a permanent way is the combination of rails, sleepers, ballast, fixtures and fastenings, etc. This term is used to distinguish the finished and permanent track from a temporary track which is laid for temporary work, i.e. for transporting construction material etc. on major construction sites.</p>	<p>A siding is a short railway track beside the main tracks. It is a low-speed track section distinct from a running line or through route. A siding is where engines and carriages are left when they are not being used. A siding can be used for marshalling, stabling, storing and unloading vehicles.</p> <p>It is often connected to a running line at one end only, at which position a signal to control the exit may be located. The other end of a terminal siding is normally provided with a buffer stop.</p>

17. Regarding the term "permanent way" (without "including sidings") several IRG-Rail members that filled the table have a similar understanding: "permanent way" is considered to be main tracks used for train paths, meaning rolling stock which runs between two places over a given period.
18. In some countries (**FR, SE, UK**) the term "permanent way" is understood wider and covers both running tracks and sidings.
19. The understanding of the term "sidings" in the table also shows a diverse picture:

20. There are several IRG-Rail members that have a narrow understanding of the term siding. Sidings are tracks to support the function of the main tracks. On the other hand there are several countries with a broad understanding of the term siding. Service facility tracks are then understood as a sub-category of sidings.
21. The following pictures visualize the most common understandings to differentiate between “permanent way”, sidings and service facilities tracks:



22. A brief analysis of the Implementing Regulation (EU) 2019/777 on the common specifications for the register of railway infrastructure shows that the term “siding”, which is attributed to the classification as railway infrastructure, is not clear regarding its demarcation from the classification as a service facility track.
23. Additionally, the term “siding” is used several times in the Directive. Storage siding is defined as a track for temporary parking vehicles and listed in Annex II point 2 and therefore classified as a service facility.
24. In Annex I on the one hand “permanent way including sidings” is classified as railway infrastructure, on the other hand “private branch lines or sidings” are excluded from the classification as railway infrastructure. Therefore, it is necessary to carefully distinguish between the term “sidings” and the term “private sidings”. Private sidings is a complex topic which is investigated by IRG-Rail as well and will be the subject of another paper.
25. **Summary:**

- There are different approaches to the understanding of the terms in Annex I of the Directive.
- Several IRG-Rail members understand the term “permanent way” as tracks used for the allocation of train paths.

2.1.3. National Legislation on ports

26. The Directive does not give any explanation or definition of what is a rail connected maritime or inland port nor does it give a clear classification of the tracks within the port area. Asking the IRG-Rail members if there is any additional national legislation beyond the Directive should show whether the differences in the actual classification of tracks in ports depend on specifics in the national legislations. The results show that many countries have additional national legislation on ports but it typically deals with other matters than the classification from a rail regulatory point of view (responsibility of port operator, investment projects, critical infrastructure, concessions etc.). Anyhow these legislations might give an insight and reasoning for the IRG-Rail members national approach on classification of tracks.
27. **Croatia** has specific legislation regarding ports (Law on Maritime Domains and Sea Ports) defining ports and also stating that they are common property and thus of interest of the Republic of Croatia which implies that services provided in ports have to be made available for public traffic. This means that a seaport may be used by any natural and legal person under non-discriminatory conditions, in accordance with its purpose and within the limits of available capacity (definition from the Law on Maritime Domains and Sea Ports). **Croatia** explained that one of the port authorities' activities is to manage the development of port capacities. This includes the responsibility for granting concessions to private companies for business activities according to the maritime legislation.
28. In **Poland**, the Regulation on port infrastructure specifies that rail infrastructure in some particular ports is classified as port infrastructure. Tracks in ports are, therefore, classified either as port or railway infrastructure. The Port Authority is responsible for the maintenance of tracks within the port area. The Polish Ports and Marina Act states that the port infrastructure (on land) are the generally accessible facilities, equipment and installations related to the functioning of the port.
29. Both, in **Italy** and in **France**, the Port Authority has a special role. In **Italy**, the law provides that where ports include rail facilities, Port Authorities — which can be in charge of the tendering and oversight on the provision of those services considered of general interest in ports — are in charge of their management. **France** has specific legislation for maritime ports, which states that the Port Authority manages the port railway tracks, regarding both traffic and maintenance. All tracks managed by the Port Authority are classified as railway infrastructure.
30. **Summary:**
 - **Irrespective of the transposition of the Directive there are no national provisions on the regulatory classification of tracks in ports in national legislation.**

2.2. National Approaches

31. The Directive does not clearly classify tracks in ports as railway infrastructure or as service facility and in most IRG-Rail members' countries the national laws do not focus on ports from a rail regulatory point of view. The national approaches on rail regulation in ports tend to derive from an interpretation based on different fields of law and regulatory experience. Therefore, IRG-Rail took a closer look at the actual classification and its reasoning.

2.2.1. Classification of tracks in ports in general

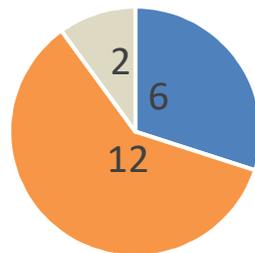
32. There is a group of six countries (**DE, UK, AT, FI, HR, PL**) that classifies tracks in ports entirely as (part of) a service facility or at least applies the rules for service facilities. Therefore in these countries there is no criteria to

distinguish railway infrastructure from a service facility within the ports. In **Germany** the national law defines that the infrastructure manager is not in charge for the tracks in service facilities. The operator of tracks within a service facility (also in ports) is qualified as service facility operator. Therefore for all tracks in ports the rules for service facilities are applied. In **UK** 'railway infrastructure' is defined as consisting of: ...the items described as "network", "station" and "track" in section 83 of the Railways Act but excludes such items: [...] (c) within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant; [...].

33. In **Finland**, since the legislative change made in February 2021, service facility regulations have been applied in terms of market regulation to tracks and rail related facilities within ports.
34. In **Croatia** the transposition of the Directive is found in the Act on Railways where ports are considered service facility according to Annex II no. 2 point (g). In **Poland** as a first step all tracks are classified as sidings in the meaning of safety regulations¹. However the tracks are handled as service facilities. Therefore the regulatory practice of Poland is similar to the five countries that classify all tracks as service facilities.
35. Another larger group of 12 countries (**BE, BG, EL, ES, FR, IT, LT, LU, NL, PT, SE, SI**) considers that within the port area tracks and other rail related assets may either be classified as service facilities or railway infrastructure.
36. Besides these two groups (classification as service facility or both) there are two countries (**CZ, SK**) who qualify tracks in ports as (private) sidings, however not within the scope of regulation for railway infrastructure.
37. In the **Czech Republic**, "siding" in that context means neither railway infrastructure nor service facility. The siding operator is obliged to allow access to the siding in a non-discriminatory way to railway undertakings. The siding operator has to notify this siding to the regulatory body, which publishes a list of sidings on the website of the regulatory body. The charges are maximally costs plus reasonable profit (economically justifiable costs). These are basically the rules applied for service facilities in rail regulation.
38. According to § 2 Art. 5 of the **Slovakian** Railway Act (513/2009), a siding is a railway track directly or through other siding leading/ connected to a railway infrastructure; it is used for the movement of railway vehicles for the purpose of loading, transshipment and unloading of goods in enterprises, warehouses, ports and terminals or for other purposes. The situation in **Slovakia** is similar to the one in the Czech Republic. Siding (privately owned and therefore not part of infrastructure) means neither railway infrastructure nor service facility but if there is any service facility next to the siding and this service facility is commercially used non-discriminatory access has to be granted and charges are total costs and reasonable profit (but only if the applicant is a railway undertaking). If the private siding is used only by the owner (enterprise) for its own purpose it is not considered a public service facility, and will not fall under rail regulation at all.

¹ In Poland Regulatory Body is also National Safety Authority

Classification respectively application of rail regulation on tracks in ports according to national approaches



■ service facility ■ railway infrastructure and service facility ■ other

39. One main purpose of the questionnaires was to find out the criteria of those countries qualifying their tracks either as railway infrastructure or as service facility.

2.2.1.1. Classification based on operational point of view

40. Looking at the reasoning presented by the IRG-Rail members, the operational function of a track seems to influence its classification significantly.
41. Eight IRG-Rail members (**BE, BG, ES, FR, IT, NL, LU, SI**) answered that one of the main criteria to distinguish between railway infrastructure and service facility tracks is whether the tracks are used for train paths (rolling stock which runs from a point A to a point B with a train number). In these countries the tracks in the ports are operated by an infrastructure manager. In **Belgium and Romania** the IM is also responsible for some of the service facilities. However, in these facilities the tracks are not considered as railway infrastructure.
42. In the **Netherlands** a part of the classification depends on whether the tracks have been designated by the Minister of Infrastructure and Waterways to be for example “main railway” and thus owned by the state and managed by the main IM.
43. Sweden pointed out that they are taking another approach: that train paths are being allocated follows the classification of the tracks as railway infrastructure. In **Sweden** the main criteria for classification as service facility is whether the rail assets have been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II, i.e. the technical capacity to provide services². This shows that some countries start with the dedication (“especially arranged”) while many others are looking from an actual operational point of view.

² See ECJ decision C-60/20 from July 15th 2021, no 39: *That definition of the concept of ‘service facility’ is based on an objective criterion, namely that of the technical capacity of an infrastructure to provide specific services, and does not lay down any criterion relating to the beneficiaries of those services. Such a criterion is independent both of the nature or classification of the legal title under which such a facility is operated and of the identity of the beneficiaries of those services.*

44. According to the findings of the questionnaire, whenever a track is only or mainly used for typical service facility functions, like storage or loading/ unloading of goods, these tracks are classified as service facility. This seems to be in line with the idea behind the wording of Annex I of the Directive 2012/34/EU excluding lines situated within railway repair workshops, depots or locomotive sheds from being classified as railway infrastructure.

2.2.1.2. Classification of connecting lines

45. Looking at the rail assets of a port area there can be different areas for storage of rolling stock or shunting movements and service facilities like terminals, maintenance facilities or fuelling stations. For the purpose of the questionnaire the connecting lines have been defined as tracks within a port area connecting the rail network with the freight terminals or connecting other service facilities within a port (e.g. shunting yards, sidings). The specific issue of how connecting lines within a port are classified was explored. The starting point for most IRG-Rail members classifying connecting lines within ports either as railway infrastructure or as service facility is the operational point of view again. However regarding the connecting lines the attribution of the operational function to either railway infrastructure or service facility is a challenge. The investigation shows that those connecting lines are the main reason for differences in classification. Looking back to the legal basis one could interpret that the challenge of classifying connecting lines might be traced back to the unclear term of sidings.

2.2.1.3. Classification based on who is operating the tracks

46. Another possible reason for the different interpretation and application of European Law for tracks in ports could be linked to the different management responsibility for operating the tracks within the port area. There might be cases where it makes a difference whether the tracks within a port are managed by the operator of the national network (which most of the time happens to be the main infrastructure manager) or the port authority (itself or a delegated company via a concession). This could be the case especially when the classification from the operational point of view does not easily lead to clear results. Therefore the IRG-Rail members were asked whether an infrastructure manager is present in the port area. They were also asked to specify whether the port authority is also the infrastructure manager.
47. The answers show that in almost all cases (18 out of 20) the port authority is not the infrastructure manager for the tracks in ports.
48. Only in **France** the port authority is qualified as infrastructure manager in application of the national law. But in the majority of cases the operational tasks are delegated to different companies managing the railway infrastructure and service facility tracks via subcontracts. However, the charges are fixed and collected by the port authority.
49. As a result from the classification of tracks in ports as service facilities there is no infrastructure manager (in the context of market regulation) operating the tracks in ports in **AT, FI, HR and UK**. **Finland** answered that the port authorities are considered service facility operators. Since the national law in **Germany** defines that the infrastructure manager is not in charge for the tracks in service facilities, the tracks in ports are not operated by an infrastructure manager as well.
50. The Port Authorities in **Poland** are state owned (e.g. a company with the majority or all shares owned by the State) but may sign an agreement with some other (also private) companies on performing as service facility operator.

51. In **BE, EL, ES, IT, LT, LU, NL, PT and SI** tracks in ports that are classified as railway infrastructure are in most cases managed by infrastructure managers operating the nationwide rail network whereas tracks that are classified as service facility tracks are operated by other entities as service facility operators. In some cases one entity operates both infrastructure tracks and service facility tracks in ports. These entities then qualify both as infrastructure manager and service facility operator.

2.2.2. Classification of tracks within freight terminals

52. Freight terminals are listed as service facilities in Annex II of the Directive. This does not necessarily mean that all parts of a terminal, including the tracks, are classified as service facilities. According to the results of the questionnaires, in a few countries tracks within a freight terminal inside a port can also be classified as railway infrastructure. The IRG-Rail members were also asked if tracks within a freight terminal can be classified as infrastructure, while for example the crane/gantry above the same tracks are classified as a (part of the) service facility.
53. Two IRG-Rail members answered “yes” to the latter question which means that different installations within one freight terminal in a port can be classified differently. In **Slovenia**, there is an example where the tracks are managed by the main infrastructure manager and thus are designated as railway infrastructure, but the other installations are classified as service facilities.
54. Most IRG-Rail members answered that all facilities within a freight terminal are considered service facility. However, some IRG-Rail members answered that cranes are classified neither as railway infrastructure nor as service facility.
55. The **French** RB answered that the cranes and loading bridges are not within the scope of regulation.

56. Summary

- **Even though national approaches differ, the IRG-Rail members who answered the questionnaire agree that not all tracks within a port area would be considered and handled as railway infrastructure. If the function can mainly be attributed to a typical service facility function like storage or loading/unloading of goods most IRG-Rail members consider the track as a service facility track.**
- **For most IRG-Rail members a general criterion to identify railway infrastructure within ports is whether the tracks are actually used or were designed and built for the allocation of train paths. The IRG-Rail members that classify tracks in ports either as railway infrastructure or as service facility firstly classify the track and then determine whether the operator of the track is considered infrastructure manager or service facility operator. Whether a train path is allocated follows the classification of the track. However many countries state that in case of doubt the allocation of a train path and the operation by an infrastructure manager operating the railway network at the interface to the port are indicators for a classification as railway infrastructure.**
- **In many countries the port authority (or its concessionaire) managing tracks within a port is considered as service facility operator; either because all tracks within the port area are considered service facility or because those tracks considered railway infrastructure are not operated by the port authority.**

- **There is no infrastructure manager (in the context of market regulation) present in the ports of those countries that classify all tracks in ports as service facilities.**
- **In most countries the tracks within freight terminals are classified as service facility tracks.**

2.3. Repercussions

2.3.1. Application of the minimum access package in ports

57. According to Art. 13 (1) of the Directive infrastructure managers shall supply to all railway undertakings, in a non-discriminatory manner, the minimum access package. The legal provisions for the Minimum Access Package (MAP) can be found in Annex II no. 1. It contains all the services supplied in order to ensure the circulation of a train between two points of the network, except for the shunting services or other operations. Additionally the charges provision in Art. 31 (3) of the Directive refers to the minimum access package. This provision prescribes that the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service. Therefore the application of the MAP has legal effects on the rules for access and charges.
58. Eleven countries (**BE, BG, EL, ES, FR, IT, LT, LU, NL, PT, SE, SI**) stated that the application of the minimum access package in the port area depends on the classification of the track. Only for the tracks classified as railway infrastructure the minimum access package is applied.

Summary:

- **In all countries that classify some tracks within the port as railway infrastructure, the minimum access package is applied to those tracks.**
- **The eight (incl. PL) IRG-Rail members that classify all tracks within the port either as service facility or as (private) siding therefore do not apply the minimum access package within the whole port area.**

2.3.2. Access

59. The allocation of railway infrastructure capacity follows the rules in Art. 38 et seq. of the Directive. The legal provisions for the allocation of service facility capacity can be found in Art. 7 et seq. of the Implementing Regulation (EU) 2017/2177 (see also Art. 13 (9) of the Directive). The main difference is that there is a fixed schedule for the allocation process for railway infrastructure tracks according to Art. 43 of the Directive and that a service facility operator has more freedom to design the allocation process. This might lead to different organisational processes regarding the allocation of the tracks. The Implementing Regulation (EU) 2017/2177 has already foreseen a situation in which different entities allocate train paths and capacity in service facilities (Recital 10 of the IR). To secure consistency a cooperation between the infrastructure manager and the respective service facility operator is laid down in Art. 7 par. 2 of the Implementing Regulation (EU) 2017/2177. At least in some member states a cooperation and coordinated allocation between the infrastructure manager and the Port Authority has been implemented and stated in the service facility description of the respective Port Authority. With regard to the project of timetable re-design (TTR) and the development of a more efficient European wide model for capacity allocation, a further and more general investigation, concerning the necessity of cooperative capacity allocation, might be necessary.

60. Summary:

- **Differences in the classification of tracks do not influence the access rights for railway undertakings that are valid for both kind of tracks. However they may influence the access rights of other applicants in some countries.**
- **Differences in the classification of tracks can lead to different organisational processes regarding the allocation of track capacity.**

2.3.3. Charges

61. The classification of the tracks could also affect how access to tracks within ports is charged.
62. In Art. 31 (3) and (7) of the Directive the charging principles for the differently classified rail assets are set. While Art. 31 (3) of the Directive states that "the charges for the minimum access package and for access to infrastructure connecting service facilities shall be set at the cost that is directly incurred as a result of operating the train service.", Art. 31 (7) of the Directive states that "The charge imposed for track access within service facilities referred to in point 2 of Annex II, and the supply of services in such facilities, shall not exceed the cost of providing it, plus a reasonable profit."
63. The IRG-Rail members were asked about the rules that are applied to determine the charges for the tracks located in the port area. The different possible answers basically reflect the rules indicated in Art. 31 (3) or Art. 31 (7) of the Directive.
64. Six IRG-Rail members (**AT, DE, FI, HR, PL and UK**) stated that they apply the rules specified in Art. 31 (7) of the Directive. Those are the countries that have previously answered that they classify, respectively handle all tracks within ports as service facilities.
65. Another group of countries (**BE, CZ, EL, FR, IT, LT, NL, RO, SE, SI and SK**) applies Art. 31 (3) or 31 (7) depending on the classification of port tracks. For the tracks that are classified as railway infrastructure Art. 31 (3) is applied and for the tracks classified as service facility consequently Art. 31 (7) is applied.
66. The **Netherlands** pointed out that Art. 31 (3) of the Directive also refers to "infrastructure connecting service facilities". In one area in the port of Rotterdam for instance, trains arrive at a marshalling yard. The marshalling yard is then connected with service facilities (freight terminals). The infrastructure that forms the connection between the marshalling yard and the freight terminals is qualified as infrastructure connecting service facilities. In NL this infrastructure however is not seen as part of the minimum access package. It is part of "access to infrastructure connecting service facilities", which is separately mentioned in Art. 31 (3) of the Directive.
67. Finally, there are two countries (**ES and PT**) that have specific national regulation regarding track charges in ports. In those countries charges for operators in the port area are not fixed according to Art. 31 (7) rules. For example, in **Spain** the economic regime for the use and exploitation of railway infrastructures within the service area of ports of general interest is regulated by the Ports Act. In particular, a freight charge is introduced, including, among other items related with port services, the use of railway tracks.
68. Another question has been raised to know whether operators of services in the port area (alongside the infrastructure manager or the port authority), such as rail service facility operators offering container handling in ports or shunting tracks areas for rail marshalling services, shall fix their charges according to Art. 31 (7) or not. Practically all IRG-Rail members affirmed this.

69. It can be concluded that in most cases the classification of tracks in ports leads to the application of the corresponding charging rule, for service facility tracks Art. 31 (7), for tracks that are classified as railway infrastructure Art. 31 (3). For service facility tracks the consideration of a reasonable profit in addition to the costs is allowed.³ This might lead to higher charges for the usage of one track than it would be if it was classified as railway infrastructure. However the actual pricing for the use of track capacity in ports is also depending on the charging system (e.g. charges for the usage of specific tracks or a “flat” rate for using capacity within the port as a whole) and the design of the port and the corresponding costs. In some cases specific national port legislation may lead to deviations. Thus possible differences in charges cannot solely be traced back to different regulatory charging rules depending on the classification of tracks in ports.

70. The regulatory requirements for the charging of rail-related infrastructure and services in ports are only one piece of the puzzle when setting fees in a port. Therefore the influence should not be overestimated.

71. **Summary:**

The charging rules applied to tracks in ports are different depending on the classification, respectively the provisions applied. This can lead to differences in charges.

2.3.4. Regulatory Competences regarding rail regulation in ports

72. Most IRG-Rail members stated that they generally have regulatory competences regarding tracks in ports just like on the rest of the railway network and service facilities in general. This means they carry out the same actions regardless if it is a port area or not. E. g. in **Croatia** the regulatory body carries out actions in ports and they do not differ in any way from the actions in the rest of the rail network. In these cases, the regulatory body acts ex officio and on request submitted to the regulatory body by the applicant if he considers that he has been treated unfairly, discriminated against or otherwise deprived of his rights, in particular against decisions of the service facility operator or railway undertaking.

73. In **Poland** and **Slovakia** the regulators have powers as for the rest of the railway network only if the applicants are railway undertakings. If an operator in the port only concludes contracts with e. g. shippers, the provisions of the Directive are not applicable for this operator. In **France**, the particularity is that the ports centralize possible disputes (of access but also related to financial issues) for all types of issues and have a process in place to coordinate disputes. In case that this process does not work, operators can refer to the appropriate authority (e.g. the regulatory body or the competition authority).

74. **Spain** specified that the difference between the regulation of ports and the rest of the railway network lies in a more detailed ex-ante supervision of the infrastructure manager's charges.

75. Others, (like **FR and SI**), have the same powers regarding the regulation of tracks in ports as on the rest of the network. But the difference with the rest of regulatory bodies is based on the fact that they do not have any power on regulating certain services, like container handling.

76. Some IRG-Rail members report that identifying all service facilities and service within a port area is a challenge.

77. **Summary:**

³ A deeper analysis of differences in charging rules can be found in the IRG-report on charges and charging principles for freight terminals of the IRG-Rail “Charges for service facilities”.

Most IRG-Rail members stated that they have the same regulatory competence regarding the regulation of tracks in ports as on the rest of the railway network. In a few countries this is only true if the applicants are railway undertakings.

2.3.5. Other possible impacts

78. Besides the aforementioned areas of repercussions there could be some impacts in the areas of safety and state funding. These areas have not been subject of this analysis since - in most cases – they are not part of the competence of the IRG-Rail members.
79. In many countries safety issues are treated separately by the National Safety Authority incorporated in different authorities.

2.3.5.1. Safety Requirements

80. The safety requirements are closely related to the physical design and the purpose of the track. The purpose of the track and the operational point of view are closely related as the main criteria for classifying tracks. However, the investigation shows that the criteria of actual usage seems to be the focus of the operational point of view in most cases and this might in some cases differ from the original purpose.
81. The IRG-Rail members have been asked whether service facility operators need to have a safety management system because it was assumed that in case no safety management system is needed it might imply that the respective track would be classified as a service facility.
82. However, the answers show a more diverse picture. Only six IRG Rail-members said that there is no safety management system needed for the operation of tracks by service facility operators. Others did not confirm this. Therefore the fact whether a safety management system is needed for the operation of a track does not seem to give an indication on the classification.

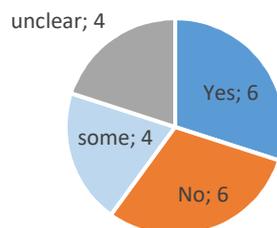


Diagram: Do SFOs need a safety management system?

2.3.5.2. State funding

83. Art. 8 (2) of the Directive opens the possibility to member states to provide infrastructure managers with financing, however with due regard to Article 93, 107 and 108 of Treaty on the Functioning of the European Union.

State funding for other investments has to comply with the Commissions Regulation (EU) 651/2014 (on block exemptions), which is setting the framework for state-aid by declaring certain categories of aid compatible with the internal market. Referring to Art. 56b and Art. 56c of this Commissions Regulation, infrastructure within maritime and inland ports may be funded if considered port infrastructure or access infrastructure. The definition can be found in Art. 2 (154) et seq. of this Commissions Regulation. Whether certain rail assets within a port fall under the block exemption as port or access infrastructure is not left to the Regulatory Bodies' interpretation. Their influence is limited to the aspect of classification of tracks as railway infrastructure or service facilities for rail regulatory purposes.

84. Rail regulation focusses on non-discriminatory access to and charges for rail infrastructure as well as service facilities. Decisions on state financing are taken by the member states.

3. Summary and analysis of findings

85. The investigation of IRG-Rail with 20 regulatory bodies contributing shows that there are differences regarding the classification of tracks within ports. There are 2/3rd of the IRG-Rail members stating that parts of the tracks are classified as railway infrastructure and other parts are classified as service facility. On the other hand there is 1/3 handling all tracks within ports as service facility tracks. There are very few countries taking an individual approach.
86. All regulatory bodies stated that the purpose and the actual use of the tracks is the main criteria for classification. However the results differ which can be traced back to the fact that the Directive leaves room for interpretation. IRG-Rail found out that this is especially the case for the interpretation of both the term "permanent way" and the term "siding".
87. Different approaches to classification lead to different access regimes which means that organisational processes differ but not the access rights per se for railway undertakings which are valid for both railway infrastructure and service facilities. Charging rules with regard to the methodology of the charging principles differ depending on the classification. But there are other factors influencing the final level of charges besides the charging rules. Therefore it cannot be assessed to what extent the classification influences the level of charges which again can have an effect on competition.
88. IRG-Rail has also investigated on a possible relation between safety requirements - although not within the competence of most regulatory bodies - and the classification of tracks. It showed that the classification of tracks cannot be derived from safety requirements or vice versa. As pointed out throughout the report the classification of tracks is a matter of market regulation with the aim of railway transport market development. Safety regulation might use similar terms but takes other approaches looking from an engineering perspective.
89. Classification of tracks seems to be one of many aspects determining the possibility to get state funding. Likewise, it would appear that rail regulation and state funding are among several factors influencing the competitive situation of seaports in Europe. The physical design of the port, the Port Regulation, State financing and political governance also seem to be important factors for the competitive situation in seaports.

4. Annex I – summaries of the presentations from the workshop tracks in ports

In June 2021 the SG Access to Service Facilities organised a workshop to discuss topics related to rail activities in ports and to elaborate the findings from the questionnaires and get a better understanding of national examples. A summary of each topic is presented in this Annex.

4.1. EU Regulation in Ports – Presentation by Transportstyrelsen (SE RB)

The aim of the presentation was to set the topic of 'classification of tracks' into a wider context, by taking a brief outlook beyond rail regulation. The presentation revolved around possible reasons behind differences in classification between ports and the general issues: What are the effects of non-harmonisation? What is the role of rail Regulatory Bodies (RBs) in ports? The objective was not to present answers, but rather to raise questions and trigger ideas for the following presentations and future discussions.

Transportstyrelsen (TS) showed that port and railway infrastructure and organisation grew out of different cultures and national needs. Consequently, to meet the overall goal on efficient transport markets, EU regulation handles ports and rail differently. Port regulation is less strict and focus on (international) competition between ports, the risk of unauthorized state aid and transparent(ish) charges – while rail regulation focuses on opening national markets for competition through access rights and caps on charges. Recital 6 and 48 from the port regulation (EU) 2017/352 were used as examples.

In the light of inconsistency between port and railway regulation TS raised the question if RBs should consider rail activities in ports as separated from or part of the port? Further TS addressed questions such as: What is the purpose of regulation in ports? Who is responsible for establishing and implementing regulation in ports? Should RBs focus on the interpretation and implementation of existing railway regulation, clarifying the interface between port and railway regulation, or try to achieve the overall goal of regulation in ports – and if so, to protect whom (RUs, forwarders, shippers)? With reference to the current tasks; is harmonized classification of tracks or transparent information on charges essential (or even desirable)?

Since maritime ports are acting on an international market, where national governments can distort markets, transparency to avoid unfair state aid and distortion of competition is, clearly, fundamental. In TS' understanding the original questions on classification of tracks in ports were raised out of fear of unfair competition between two ports. But, it is unclear how classification of rail assets affect the application of state aid rules. How ports are organised (public/private, powers of port authority etc.) is probably more relevant in relation to state aid issues. TS also said that rail regulation is probably not sufficient to solve the original issue, which requires a wider scope. Against this background, TS raised the questions: What should be RBs' targets when monitoring rail connected ports? Compliance with Dir. 2012/34/EU and (EU) 2017/2177 or to prevent distortions in the (national) railway market or the (international) ports market? Is existing EU regulation sufficient and appropriate to deal with the current issues? What is RBs' responsibility?

Regarding effects of non-harmonised classification of tracks in ports TS shared the view that: Classification is probably not the key issue. To understand the role of rail regulation in ports, a better understanding of port regulation, state aid rules and the interconnections between rail and sea transport is needed. Case-by-case investigations are necessary to gain insight to the complexity of transport markets. However, RBs will not be able to solve port issues on their own. The European Commission must take lead!

4.2. Relevance of market perspective, status of manager of rail network and the port infrastructure manager in national law – Presentation by CNMC (ES RB)

The presentation of the Spanish case focused on explaining the concept of railway infrastructure and service facility in the national rail legislation (Rail Sector Act 38/2015). Passenger transport stations and freight terminals appear to be classified both as railway infrastructure (see Article 3 of the Rail Sector Act) and as service facilities (see Article 42(1)(a) of the Rail Sector Act).

This is because the Spanish law is quite broad and includes aspects from the Directive, which deals with market regulation, but also other aspects more related to safety, where the engineering concept of infrastructure prevails and also applies to service facilities.

There is currently a project to amend the Rail Sector Act, which has basically opted to copy the provisions of the Directive in relation to the concept of infrastructure and service facilities. This means that the challenges for its interpretation will remain.

The Spanish regulator (CNMC) in its report on the legislative amendment indicated that “A priori, the elements considered as infrastructure must be linked to the allocation of capacity, limited to the scope of the path allocated by the infrastructure manager. Conversely, facilities subject to slot allocation by operators where rail services are provided would be considered as service facilities”.

On the other hand, the competences of the port authorities for the management of port infrastructures and their different regime with respect to the infrastructure manager were discussed. In addition, the presentation highlighted the importance of the agreements signed between the port authorities and the infrastructure manager; especially the mechanism in which the rules are fixed for the physical and functional connection of railway infrastructure managed by each entity and the rules for the design, allocation of capacity and operational aspects of the network.

The economic regime governing the use and operation of railway infrastructure and the provision of the services, within the service area of ports of general interest, shall be in accordance with the provisions of the State Ports Act.

Port Authorities shall have a safety management system adapted to the nature, magnitude and other conditions of the railway activity within the port service area that ensures the control of the risks created by it, and the relevant self-protection plan for their facilities, without requiring a safety authorisation. However, this safety management system is approved by the national safety agency, which guarantees the application of homogeneous rules throughout the rail network of general interest.

4.3. Classification according to safety aspects, examples of classification - Presentation by ART-IT (IT RB)

Over the last 4 years ART-IT has focused much of its efforts and resources on the regulation of service facilities, including the regulation of facilities and related services in port areas.

Decision no 18/2017 has provided a definition of single operator for shunting services for a first set of railway operating areas. The group includes several ports: La Spezia, Venezia, Ravenna, Livorno, and later Trieste (Decision no 99/2019, available at the following link: https://www.autorita-trasporti.it/wp-content/uploads/2018/06/Decision-No-18_2017-annex-a-Regulatory-measures.pdf).

Under Decision no 130/2019 (<https://www.autorita-trasporti.it/delibere/decision-no-130-2019/?lang=en>), a single operator model for shunting services may be adopted in all the railway operating areas in a port (e.g. the Port of Gioia Tauro opted for the Single Operator). Furthermore, new rules have been established for the contractual agreement between Port Authorities and the infrastructure manager.

The next steps will focus on monitoring the application of the afore mentioned Decision no 130/2019 in port facilities, as many service facilities operators seem to be reluctant to apply the provisions of Regulation (EU) 2017/2177 and Decision no 130/2019. Moreover, ART-IT will evaluate any criticalities that may be identified in the application of EU law and ART's regulation in the railway port area vis-à-vis the national legislation on port services which may encompass specified rail services, such as shunting.

The situation of Italian rail infrastructure in port areas is quite heterogeneous and dynamic: drawing a distinction between service facilities and infrastructure is not an easy task; some criteria can be identified, e.g. the scope for which tracks are used (train movements or shunting operations) and therefore the applicable charges (MAP or extra-MAP services).

In some cases tracks in port areas, which were initially classified as infrastructure under the direct management of the infrastructure manager, are currently managed by the service facility operator (Civitavecchia, Genova Sampierdarena, Trieste, and Savona-Vado). On the other hand, specific situations are in place, e.g. in the Port of Gioia Tauro, where the port departure/arrival station is owned by the Port Authority and the infrastructure manager provides the human resources for rail traffic management, or in the Port of Livorno where tracks used as service facilities have been modernized and converted into a station (Livorno Darsena) inside the port area under the direct management of the infrastructure manager.

Recent exchanges with the national IMs have highlighted that they would be ready to adopt for the future the same approach in all port areas consisting in managing the tracks up to the entrance of the port rail infrastructure (departure/arrival station).

In conclusion:

- it is difficult to define the border between infrastructure and service facilities inside ports;
- it is useful to apply criteria such as: train path allocation vs terminal slots allocation, safety criteria related to the technology of the tracks (signalling system, automatized switches etc.);
- in any case, the main principle seems to be the use of the tracks (train departure and arrival, connecting siding between infrastructure and SF, shunting/siding yards) and the related charges applied (MAP or access for extra-MAP services).

4.4. Example port of Antwerp, distinction between infrastructure, service facilities and private siding - Presentation by FPS Mobility (BE RB)

The goal of the presentation was to give an insight in the classification of tracks in the Port of Antwerp in Belgium. The Port of Antwerp has more than 1000 km of rail tracks and accommodates about 300 trains a day. The port is not considered as one big service facility, but consists of several service facilities or private sidings which are linked together by tracks that are owned by the infrastructure manager Infrabel and are part of the IMs network. These tracks, owned by the national infrastructure manager are classified as infrastructure, the tracks that are located in a service facility are considered as a part of these service facilities.

Infrabel is also the owner/operator of several service facilities in the port. For these facilities the same principle as above is applied: the tracks within these facilities are considered part of the service facility. As a consequence, Infrabel has two roles in the port: infrastructure manager on the one hand and service facility operator on the other.

Another consequence is that railway undertakings need to request train paths to go from one service facility to another (except when the two service facilities are adjacent). This classification has also consequences on the operational and safety side, as all safety checks need to be performed in order to access the train path (infrastructure). A last consequence is that the track access charges need to be paid for the use of the train path between the service facilities.

As a conclusion: the tracks in the Port of Antwerp are classified as infrastructure when they are owned by Infrabel and are not situated in a service facility. Tracks that are located in a service facility are considered part of that service facility, this is also the case when these service facilities are owned by Infrabel.

4.5. Classification and making tracks available, responsibility for track management, contracting access to port terminals - Presentation by UTK (PL RB)

According to the Polish Railway Act it is the infrastructure manager/service facilities operator who decides how to classify the tracks in the service facility. Therefore in case of terminals located in ports the terminal operator or Port Authority decides how to classify the tracks located there. Tracks classified by terminal operator or Port Authority as railway infrastructure should be made available as railway infrastructure. Tracks classified by terminal operator or Port Authority as service facility should be made available as service facility. In both cases tracks in ports are classified as sidings in the meaning of national safety regulations.

4.6. Rail Transport Act amendments affecting rail regulation in ports - Presentation by Traficom (FI RB)

The main national legislation governing railways in Finland (Rail Transport Act) was modified with port related amendments starting on 1 February 2021 with the following consequences:

- Tracks and rail related facilities (including tracks and platforms) located in ports are considered service facilities - there are no infrastructure managers (in the context of market regulation) in ports anymore.
- Port authorities are considered service facility operators - they do not have to publish Network Statements anymore, but the service facility descriptions.
- Finnish RB will from now on supervise ports' service facility descriptions (not on a regular basis) instead of the yearly supervision of port infrastructure managers' Network Statements, which was done before the legislative amendments.

Regardless of the transport mode, port authorities levy 1) "port dues on goods" (based on tonnes or quantity, usually paid by shipper for all the goods going through the port) and 2) "port dues on vessels" (based on vessel's size, usually paid by shipping company). Service facility related regulation seems to be more flexible than track access charges related regulation that was used earlier.

Now that tracks in ports are considered service facilities, Article 31.7 of the Directive shall be applied, when determining the charges both for tracks and other rail related services in the port area.

The change in legislation has not affected the obligations under the safety regulation on ports' tracks. In Finland, the regulatory body has no competence for safety regulation, but only for market regulation.

4.7. National legislation on charges – Presentation by AMT (PT RB)

The presentation of the AMT – Authority for Mobility and Transports, shows that the Portuguese regulator is a multimodal independent economic regulator which mission is to define and implement the general framework for the regulation and supervision policies on land, inland waterways, and maritime transport activities and infrastructures.

AMT's main competencies in regulating railways are those defined in AMT's statutes and in the legal act transposing Directive 2012/34/UE, namely the definition of rules and criteria on access to the infrastructure and approval of charges proposed by the infrastructure manager.

Regarding the maritime dimension, Portugal has a long seashore on the Atlantic Sea with three ports (Sines/Lisboa/Leixões) belonging to the Atlantic Corridor of TEN-T. The seaports are very important for the Portuguese economic activity and all the most important ones are connected by rail.

In the Portuguese legal framework, there is a specific act that establishes the principles of Ports' Charging Scheme applicable in the jurisdiction area of Port Authorities. These rules and principles shall also apply to the activities carried out by concessionaires and licensed operators for the provision of public port services.

The "Port Use" charge reflects the parameters for setting the charges to be paid for the services to the ship and cargo, by components specifically allocated to those services, including their availability. So, components of the systems relating to the operation of ships and cargoes as roads, railways, and pipelines in the port, access, sorting, and circulation shall be considered in the setting level of "Port Use" charges

As regards track sections belonging to the National Railway Network connecting the main lines with the ports, they are classified as infrastructure according to Annex I of Directive 2012/34 and are covered by the provisions regarding Minimum Package Access as defined in Directive 2012 34 /UE and Implementing Regulation 2015/909 (Direct Costs).

Tracks inside the ports belonging to the jurisdiction of Port Authorities are not described in the Network Statement therefore they are not part of the national railway network and so they cannot be classified as infrastructure, pursuant the Annex I of Directive 2012/34. They are covered by Port's Law.