

**21st meeting of the European Network of Rail Regulatory Bodies
Via Videoconference – 15 December 2021**

Draft Minutes

Rail Regulatory Bodies from the following Member States were represented: AT, BE, BG, HR, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, LU, NL, PL, RO, SE, SI, SK

Together with observers from: NO, North Republic of Macedonia and CH, RNE and UIRR

European Commission: Maurizio Castelletti (C3), Anastasia Kontogianni (C3), Vassil Zhivkov (C3), Maia Vaquieri (C3), Pilar Domingo-Moron (C3), Keir Fitch (C4), Wawrzyniec Perschke (C4), Jan Scherp (A4), Raphael Rauch (A4)

1. Approval of the agenda

The agenda was approved.

2. Approval of the minutes of the 17th ENRRB meeting

The minutes were approved. DG MOVE committed to produce even more detailed and comprehensive minutes, in accordance with the needs of the regulatory bodies as explained by the Swedish Regulatory Body.

3. Round table discussion: recent developments in Member States (relevant cases, changes to organisational set-up)

A roundtable discussion took place, which allowed for the exchange of information about ongoing work and recent decision-making practice, main issues of pending/recent procedures and problems of transposing Union railway law.

4. Rail Facilities Portal (RFP)

The Co-chairs of the working group Access to Service Facilities presented an overview on the contributions IRG-Rail or their members have given so far concerning the Rail Facilities Portal (the Portal) or its predecessor. RNE, then, presented the latest information about the Portal. RNE noted that they had been in contact with the regulatory bodies in different fora. The Commission services expressed support for the Portal, which had been developed initially as a Commission-led project. They invited regulatory bodies to engage actively in the development of the Portal, not just as observers. The Commission services pointed out that digitalisation of information and services was high on their policy agenda and the Portal was an important element. From that perspective, encouraging stakeholders to upload descriptions in the Portal was important. The dialogue on the Implementing Regulation should continue and an evaluation of the rules could be necessary. Regulatory bodies (DE, SE) stated that their position of an independent ‘referee’ did not allow them to promote the Portal. Some pointed out that even if collecting descriptions in digital format was a good idea, it was not a legal obligation. One regulator stressed that publishing all the elements indicated in Article 4(2) of the Regulation would not result in meeting legal obligations. It was up to the regulatory body to decide what information needed to be published to ensure there was no discrimination and

distortion of competition. Furthermore, the regulatory body had to check accuracy of the data before confirming compliance with the legal rules.

5. Annex VII

The Swedish regulatory body presented experiences and results of current investigations/supervisions on the implementation of Annex VII in Sweden. The German regulatory body presented the result of the investigation on the implementation of Annex VII Body in Germany. Lastly, IRG-Rail presented an overview of the implementation of current rules relating to Temporary Capacity Restrictions (TCRs) under Commission Delegated Decision (EU) 2017/2075. There was no time for additional discussions at the end of the presentations.

6. Public Passenger Transport Services by rail

A Summary of Member States' reports on the implementation of Article 8(2) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services, by rail and by road was presented. The conclusion of the summary was that many MS that qualify for the exemption of Art 5(4a) (i.e. having a market volume of less than 23 mill. train-km) expressed their intention to take advantage of this exemption and continue with direct awards. However, apart from MS already using tendering procedures for rail PSC, more and more MS are willing to take into consideration a market opening via competitive award procedures.

7. Account separation of commercial and passenger public services

The Spanish Regulatory Body (CNMC) explained the recent decision on the account separation of public and commercial services of RENFE. There were no questions at the end of the presentation.

8. Case C-453/20 CityRail

The Czech regulatory body presented case C-453/20 CityRail and argued that it will most probably be found not to be competent to refer a preliminary ruling to the CJEU. The decision on Case C-453/20 CityRail is expected in 2022 (statement of the GA – 16/12/2021)

9. Track access charges

The Belgian regulatory body presented its decision on “hyper-peak” charges of the Belgian Infrastructure Manager. The Tariff “hyper-peak” was found not to be in line with art. 58 of the Rail Codex. The decision became effective immediately for the market segments in which there was competition. For the segment of public service, a postponement of 1 year was granted.

10. 2022 Revision of the Technical Specifications for Interoperability

The Commission analysed the options for boosting implementation of the TSIs and provided an update on national rules & 4th railway pack. A discussion was initiated with the rail regulatory bodies, which shall continue in the future.

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AT	Schienen-Control GmbH (SCG)
BE	Service de régulation du Transport ferroviaire et de l'Exploitation de l'Aéroport de Bruxelles National
BG	Railway Administration Executive Agency (RAEA)
CZ	Transport Infrastructure Access Authority (UPDI)
DE	Bundesnetzagentur
DK	Danish Rail Regulatory Body (Jernbanenaevnet)
EE	Estonian Competition Authority (Konkurentsiamet)
EL	Greek Regulatory Authority for Railways (RAS)
FI	Finnish Transport Safety Agency (TRAFICOM)
FR	Autorité de régulation des transports (ART)
HR	Croatian Regulatory Authority for Network Industries (HAKOM)
HU	The Rail Regulatory Body of Hungary
IE	Commission for Railway Regulation Ireland
IT	Autorità di Regolazione dei Trasporti (ART)
LT	Communications Regulatory Authority of Lithuania (RRT)
LU	Institut Luxembourgeois de Régulation
LV	State Railway Administration of Latvia
NL	Authority for Consumers & Markets (ACM)
PL	Polish Office of Rail Transport (UTK)
PT	Autoridade da Mobilidade e dos Transportes (AMT)
RO	Romanian National Railway Supervision Council (RCC)
SE	Swedish Transport Agency (Transportstyrelsen)
SL	Agency for Communication Networks and Services (RS - AKOS)
SK	Transport Authority of Slovakia

SP	Comisión Nacional de los Mercados y la Competencia (CNMC)
EC	
	Observers:
CH	Railways Arbitration Commission (RAILCOM)
MK	Railway Regulatory Agency (RRA)
NO	Norwegian Railway Authority