

**Minutes**  
**10th meeting of the European Network of Rail Regulatory Bodies**  
**27 and 28 June 2016, Vienna**

**1. Approval of the agenda and of the minutes of previous meeting**

The agenda of the 10th meeting was adopted, including the suggestions of DG MOVE to provide an update on work on implementing and delegated acts under agenda item 15 and to discuss problems related to rail infrastructure gauge under agenda item 18. The minutes of the 9<sup>th</sup> meeting were approved without any changes.

**2. Nature of the meeting**

The meeting was not public; a representative of a national competition authority was invited to attend the meeting for one specific agenda item in order to give a presentation.

**3. List of points discussed**

**Presentation by a national competition authority on ticket distribution**

A national competition authority explained the background of a recent case on ticket distribution, in which it issued a commitment decision requiring the incumbent undertaking to facilitate access to ticket distribution systems.

Before issuing the decision, the commitments offered by the incumbent undertaking were tested in a consultation with relevant stakeholders, including the rail regulatory body.

DG MOVE underlined the need to strengthen cooperation between regulatory bodies and competition authorities and encouraged regulatory bodies of other MS to follow this example and cooperate more closely with national competition authorities.

**Round table on regulatory bodies' decision-making practice**

Regulatory bodies actively participated in the round table discussion, reporting about the state of play of transposition of Directive 2012/34/EU in their respective Member States as well as pending cases and recent decisions.

The round table discussion allowed exchanging information about ongoing work and recent decision-making practice, main issues of pending/recent procedures and problems of transposing Union railway law.

Exchange on pending cases and recent decisions concerned questions on capacity allocation, performance regime, collection of information on service facilities to be included in the network statement, access to and charges for service facilities and rail related services, economic equilibrium test concerning a new international service, network statement, organisation and management of stations, application of rail regulation to intermodal terminals, possessions, border crossing arrangements, priority rules and management independence of infrastructure managers.

## **Presentation by the Commission on the 4<sup>th</sup> railway package**

DG MOVE informed about the outcome of negotiations on the market pillar of the fourth railway package and the next steps in view of the formal adoption of the market pillar, with a focus on new competences introduced for regulatory bodies.

Regulatory bodies enquired about the envisaged implementing act on the economic equilibrium test as well as the relation between new open access rules applicable as from 2020 and the transitional rules applicable to PSO contracts. DG MOVE informed that work on the implementing act on the economic equilibrium test would probably start in 2017; it still needs to be seen whether it is more appropriate to update the existing implementing act on the economic equilibrium test or to draft a new implementing act. DG MOVE also explained the interplay between the PSO Regulation and the governance Directive. The PSO Regulation gives competent authorities a margin of manoeuvre as regards definition of public service obligations and protects until 2033 contracts awarded under the existing legal regime before 2023, while the governance Directive introduces open access also for domestic passenger services as from 2020.

## **Discussion on organisation and priorities for the work of ENRRB**

A task-force meeting on this topic was held with a number of regulatory bodies in May 2016. It was suggested that instead of round-table discussions relating to numerous different topics, meetings should focus more on a small number of well-defined topics. The questionnaire sent out ahead of the meetings to collect information from participants should reflect this approach.

The importance of DAREBO, which should help to strengthen cooperation and exchange among regulatory bodies, was underlined by participants.

Regulatory bodies also expressed interest organising dedicated workshops with third parties, such as sector associations, or to invite key stakeholders to ENRRB meetings for specific agenda items on which they might be able to provide interesting input.

It was agreed to take forward the measures when preparing upcoming ENRRB meetings.

## **Update of Commission on DAREBO**

DG MOVE provided an update on the state of play as regards the development of DAREBO. The development has almost been completed. It is expected that the testing phase can be launched during the summer. All regulatory bodies will receive an invitation to take part in the testing phase, including explanations on how to get access to the system.

If the testing phase shows a need for changes, such changes should be incorporated in early autumn; the objective would be to get the final version of DAREBO online in October.

## **Presentation by a regulatory body on criteria for determination of charges for access and use of the railway infrastructure**

One regulatory body presented the new track access charging system, established on the basis of a decision issued by the regulatory body. This decision introduces a 5-year regulatory period as well as annual efficiency targets for the infrastructure manager. When calculating track access charges, the infrastructure manager may only take into account the relevant costs

of efficient service provision. Taking into account these requirements, the infrastructure manager has developed an algorithm which was subject to approval by the regulatory body.

A mid-term review of the charges is envisaged in order to assess aspects such as development of real traffic vs. traffic estimates, etc.

### **Presentation by a regulatory body on the economic equilibrium test**

One regulatory body gave an outline of the analysis undertaken to assess whether access to a line on which PSO services are being operated could be granted to one or more open access operators. During its assessment, the regulator looked at questions including capacity and performance implications, the impact on governmental funds for railway services, cost and benefits of different applications as well as the impact on viability of competing open access services.

The regulatory body explained that in order to assess the capacity available on a line, it has developed modelling based on factors such as rolling stock used, pattern of stops, etc. to check the information submitted by the infrastructure manager.

### **Presentation by a regulatory body on capacity for maintenance works**

One regulatory body presented a decision concerning a complaint on capacity allocation, where priority was given to the IM requesting capacity for maintenance works under the annual scheduling. The complainant argued that during the allocation phase the priority criteria set out in the network statement had not been correctly applied and that the maintenance works in question should have been published in the network statement before the start of the allocation phase.

### **Discussion on experience and best practice in performing monitoring tasks as foreseen in Directive 2012/34/EU**

One regulatory body gave an introduction to its market monitoring activities, which include an annual report on the state of competition in the railway market submitted to the national Parliament. Every two years a consultation of users of the rail market is carried out and the results are published in a separate report; the consultation is based on a questionnaire and interviews conducted with sector representatives. The total workload amounts to about 800 hours.

Another regulatory body gave an overview over its powers to obtain information from the sector for the purposes of market monitoring; these powers encompass all information that the regulator might find useful for performing its tasks. In case of refusal to provide data penalties (up to 3% of previous year's revenues) may be imposed.

Another regulatory body explained that in the context of its monitoring activities it does not only collect facts and figures, but also views of train operators on selected topics (e.g. rating of state of infrastructure, etc.). That regulator is also cooperating/aligning with the national statistical office as regards market monitoring, including one single questionnaire and data exchange. The findings are published in an annual report.

## **Information of the commission on calculation of charges for access to the railway infrastructure**

DG MOVE recalled the legal framework for calculation of track access charges after adoption of the implementing regulation on modalities for calculation of direct costs, highlighting some recent developments in Member States and candidate countries.

## **Update by the Commission on work of other expert groups (SERAC, PRIME, RU dialogue) and on work on implementing and delegated acts**

DG MOVE is preparing a draft implementing act on access to service facilities, which should be available by end of September. DG MOVE also informed that a joint meeting between the RU dialogue subgroup on access to service facilities and regulatory bodies would take place at the beginning of July in Brussels. This meeting gives regulatory bodies an opportunity for an exchange of views with railway undertakings as regards problems to be addressed in a future implementing act or through complementary measures.

Following the request of a number of Member States at the last SERAC meeting in June, DG MOVE is currently collecting information on levies for passenger services in accordance with Article 12 of the recast. On this basis, DG MOVE will assess the need for an implementing act under Article 12 of the recast.

The 4th railway package suggests the adoption of an implementing act on cooperation between regulatory bodies. The act should focus on a procedure to be followed for cooperation in cases concerning two or more regulatory bodies. DG MOVE reminded that the European Parliament expects a swift adoption of such an implementing act, given that this provision was inserted as a compromise, following the Parliament's wish (and respective amendments) to set-up a European regulator.

DG MOVE also informed about the state of play of preparation of a delegated act on timetabling. A number of preliminary consultations with the sector have been held and a draft act should be presented during the autumn.

DG MOVE then informed regulatory bodies about the activities of PRIME and its subgroups, the RMMS working group, the plenary meeting of RU dialogue and the work of its subgroups, the SERAC meeting of June and the state of play as regards the evaluation of the rail freight corridor regulation (ongoing consultation).

## **Update by the Commission on infringements**

In May, the advocate general presented its conclusions on case C-482/14 concerning accounting separation. The advocate general followed the Commission's reasoning on one allegation and - while acknowledging the probability of the alleged violations - rejected two other allegations arguing that the Commission could not bring proof. A hearing on this case is scheduled to take place in July 2017.

## **Report of IRG-Rail**

IRG Rail presented recent activities, which include also a stakeholder survey carried out in spring 2016. The follow up to this survey is currently being discussed within IRG Rail.

## **A.O.B.**

DG MOVE presented its reflections concerning problems of clearance gauge and invited regulatory bodies interested in further discussing this topic (with a view to possibly developing common decision making principles) to express their interest.

An ENRRB workshop on charging (with a focus on questions concerning mark-ups) will be held in Paris on 20th October.

A joint meeting between ENRRB and PRIME will be held on 11th October in Turin.

## **4. Next meeting**

The next ENRRB meeting will take place between 5th and 7th December, subject to confirmation nearer the date.

## **5. List of participants**

Rail Regulatory Bodies from 25 Member States and 3 observers as well as one representative of a national competition authority were present at this meeting chaired by the Commission.