

Minutes
9th meeting of the European Network of Rail Regulatory Bodies
18 and 19 January 2016, Brussels

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

The agenda of the 9th meeting was adopted and the minutes of the 8th meeting were approved, taking into account comments received from two regulatory bodies.

2. Nature of the meeting

The meeting was not public. Experts from the international transport forum, the European railway agency and the Steer Davies Gleave were invited to join the meeting for specific agenda items in order to give presentations.

3. List of points discussed

Round table discussion

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 framework agreements, handover of trains at borders, track access charges (charging framework and determination of charges), charges for traction current, independence of infrastructure managers and service facility operators, access to passenger stations and publication of information on service facilities.

Further topics addressed during the round table included accounting separation requirements, consultation of representatives of users of rail passenger and freight services and developments on market opening and market shares of new entrants.

The PT Regulator introduced the new Transport Regulator AMT, which is responsible for different modes of transport.

Presentation of a regulatory Body on a study to assess the dominant position of a railway undertaking operating service facilities (Article 13 of the recast)

One regulatory body has requested a consultant to do a study on the dominant position of service facility operators in the national rail freight and passenger transport market for which the facilities are used. The consultants decided to not only look at the position of the operator in the railway market, but also took into account intermodal competition.

There was a discussion over whether the approach of not only looking at the rail market but also at the entire transport market would be appropriate and compliant with the wording of Article 13(3) of Directive 2012/34/EU. Some participants underlined that in Member States where rail has a low modal share, such an approach could result in a conclusion that

regardless of its intra-modal market share no railway undertaking would have a dominant position. Moreover, the wording of Article 13 of the Directive would rather seem to suggest an approach of looking at the position of the operator on the rail market, than an approach of also looking at intermodal competition.

Presentation of a regulatory body on Service Facility Statements

One regulatory body has developed a template for a service facility statement together with service facility providers; the template specifies the information on conditions for access to service facilities to be published in accordance with Article 27 and Annex IV of Directive 2012/34/EU. The new template is already in use e.g. in some ports. The regulatory body has also worked together with service facility operators to make sure that these templates are correctly filled in and published. The template developed for ports covers not only information on infrastructure and technical equipment directly related to rail operations (e.g. on cranes for loading/unloading) but also on storage spaces, etc. Information on all service providers in a facility (e.g. port) is compiled in one single document.

It was suggested that the template might serve as best-practice model in upcoming discussions with other stakeholders (infrastructure managers, service facility operators) in view of developing a common template for a service facility statement.

Presentation and discussion on ERTMS

ERA and DG MOVE presented the state of thinking as regards the longer-term perspective for ERTMS, in particular as regards ERTMS financing and protection of investment into ERTMS.

ERA and DG MOVE invited regulators to share information on current Member States' practices to facilitate retrofitting of vehicles that becomes necessary as a result of infrastructure changes and to exchange views on the possibility to apply provisions of the recast on exceptions to charging principles (e.g. Articles 32 and 35 of Directive 2012/34/EU) to finance installation of ERTMS.

Some regulatory bodies enquired about the compatibility of different versions of ERTMS. ERA and DG MOVE explained that improving compatibility was one of the main concerns and ERA was working to ensure backward-compatibility of new versions of ERTMS.

Information on follow-up PRIME-ENRRB

The first joint meeting between PRIME and ENRRB was held in London on 18 September 2015. The objective was to identify the potential scope for cooperation between infrastructure managers and regulatory bodies in order to facilitate implementation of Directive 2012/34/EU and the development of Rail Freight Corridors. The conclusions of this first meeting include the idea of having plenary meetings PRIME-ENRRB on an annual basis and to organise different workshops on selected topics of common interest, which might include mark-ups, service facility statement or projects of RNE.

Exchange of views/best practices on penalty regimes/sanctions procedures

One regulatory body presented a case, in which for the first time it will impose sanctions to enforce its decision in accordance with Article 56(9) of Directive 2012/34/EU. In the Member State concerned, non-compliance with decisions of the regulatory body can be sanctioned by

means of weekly fines. These fines should encourage the entity concerned to comply with the decision of the regulatory body as soon as possible.

Another regulatory body provided an overview of the policy on enforcement of its decisions and the applicable penalties regime. The amount of penalties that can be imposed by that regulatory body can be up to 10% of the turnover of a licence holder in case of very serious breaches. In severe cases, penalties ranging up to > 15 Mio € have already been imposed.

In a following round-table discussion, other regulatory bodies also shared experience on penalty regimes and sanctions procedures applicable their respective Member States. The exchange showed that while in some Member States regulatory bodies are given very powerful tools to enforce their decisions, in other Member States maximum amounts of sanctions are rather low and may not have a very strong dissuasive effect.

Presentation of the database for rail regulatory bodies ('DAREBO')

DG MOVE presented the first pilot of the DAREBO application currently being designed to facilitate exchange of information between regulatory bodies and its different functionalities (tools for encoding decisions, automatic translation, search function, overview of competences of regulatory bodies, etc.).

Regulatory bodies suggested that additional functionalities should be added such as space to upload not only decisions, but also other documents (e.g. guidelines issued by regulatory bodies) or an indication of whether a decision was subject to an appeal and space to add information on the outcome of appeal procedures; DG MOVE concluded that such functions may be added during the upcoming development phase.

Presentation of a Regulatory Body on the review of the track-access charging scheme

One regulatory body informed about the state of play of the revision of the track-access charging scheme of the infrastructure manager and the challenges encountered in this exercise (e.g. determining costs of intra-group services, rate of return on equity, etc.). Two expert opinions had been requested to support the work of the regulatory body.

Update on the Fourth Railway Package

DG MOVE informed that the technical pillar would probably be adopted in Spring 2016 (depending on the progress on the market pillar). For the market pillar, Council has reached an agreement on a General Approach in October 2015 and trilogue negotiations have started; the objective is to conclude trilogue negotiations in March 2016. The General Approach of the Council is not fully satisfactory but can hopefully be improved in the trilogue negotiations.

Regarding Regulatory Bodies, DG MOVE highlighted that the Council and EP want to see strong national regulators. Regulatory bodies will be entrusted with additional tasks, including monitoring of maintenance planning and traffic management. While dropping the request to establish a European regulator, the EP has very high expectations towards the work of ENRRB, including the development of common decision making principles. EP it is also looking to reinforce cooperation between regulatory bodies on concrete cases with a cross-border dimension and to this end has requested an implementing act setting out details of the procedure of cooperation between regulatory bodies.

Update on implementing acts under the recast

DG MOVE informed that the implementing act on framework agreements is expected to be voted during the SERAC meeting on 4-5 February 2016.

The implementing act on access to service facilities is under preparation; discussions with stakeholders to identify crucial points to be addressed are ongoing.

Presentation of the study on cost and contribution of Rail in Europe

SDG presented the results of a study commissioned by DG MOVE on cost and contribution of rail in Europe. The results of the study are available at <http://ec.europa.eu/transport/modes/rail/studies/doc/2015-09-study-on-the-cost-and-contribution-of-the-rail-sector.pdf>.

Some regulatory bodies expressed a few concerns over the figures presented in the report and indicated that on the one hand they might be based mainly on reports of incumbent railway companies and on the other hand there might be a wrong interpretation of some figures.

One regulatory body also suggested that when choosing the variables for the clustering exercise it might have been useful to put a stronger focus on rail specific variables; the study seemed to look at a broad range of economic factors, only few of which were rail specific.

Presentation of the activities of IRG-Rail

IRG-Rail presented their recent activities, including meetings with stakeholders and the adoption of two position papers and gave an outlook on upcoming activities concerning in particular access to service facilities and rail related services as well as charging for such services.

4. Next meeting

The 10th ENRRB meeting will be held on 27-28 June 2016 in Vienna.

5. List of participants

Rail Regulatory Bodies from 21 Member States and 3 observers as well as invited experts from ERA, SDG and ITF participated in the meeting chaired by the Commission.