

Minutes
12th meeting of the European Network of Rail Regulatory Bodies
22 and 23 March 2017, Brussels

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

The agenda of the 12th meeting was adopted without changes.

The minutes of the 11th meeting were approved, including changes requested by five Members of ENRRB.

2. Nature of the meeting

The meeting was not public; two external experts were invited to participate in the discussion on clearance gauge.

3. List of points discussed

Preparation of RNE-RB meeting

The annual meeting between regulatory bodies and RailNetEurope (RNE) is scheduled to take place on 6 April in Vienna. Topics on the agenda include discussions on the project of redesign of the international timetabling project currently being developed by RNE and FTE, on the common structure of the network statement and the corridor information document developed by RNE, on rail freight corridor related guidelines of RNE, on the revision of Annex VII of Directive 2012/34/EU concerning the schedule for the capacity allocation process, on the follow up of the Rotterdam sector declaration on rail freight by RNE and regulatory bodies and on a possible update of the Memorandum of Understanding between regulatory bodies and RNE signed in 2009.

MOVE provided an introduction to the topics, mainly on the basis of information available on the website of RNE and invited regulatory bodies to reflect on key elements they would like to raise/discuss during the joint meeting. Regulatory bodies indicated they were not very familiar with all of the projects RNE is working on, but were expecting that the meeting should allow them to learn more about some of the projects.

Roundtable discussion: how to perform joint regulatory supervision

One regulatory body had proposed this topic for discussion as it was interested to learn from fellow regulatory bodies about best practice concerning performance of joint regulatory supervision. MOVE collected information about experience of regulatory bodies in performing joint regulatory supervision ahead of the meeting. The feedback received indicated that there was limited experience concerning cooperation on specific cases with a cross-border dimension.

MOVE emphasized the importance of cooperation on concrete investigations; the mere fact that so far there have hardly been any complaints of an international dimension would not imply that there was no need for such cooperation. Own initiative procedures, e.g. on approval of mark-ups, could also be important areas where regulators should start cooperating with their relevant counterparts in other Member States (e.g. to assess the ability of the market

to pay mark-ups not only in a national context, but for the full train run, which may cross several countries).

MOVE also recalled that the European Parliament was expecting the Commission to prepare an implementing act on procedures for cooperation of regulatory bodies in cases having an international dimension. MOVE is planning to work on this draft implementing act in 2018; existing arrangements of regulatory bodies for handling cases concerning rail freight corridors as well as bilateral cooperation agreements could be a starting point for this work.

One regulatory body underlined that the very different level of resources of regulatory bodies would make cooperation sometimes very difficult; a precondition for stronger and successful cooperation between regulatory bodies would thus be a more harmonised situation concerning powers and resources of regulatory bodies.

Update on initiatives of DG MOVE

MOVE reported about the preparatory work for the year of multimodality, ongoing work concerning rail freight and on the activities of SERAC (incl. SERAC RFC), PRIME and RU dialogue.

Discussion on draft implementing act on clearance gauge

MOVE provided updated information on the topic and discussions held on the first draft of an implementing act with colleagues from the European Union Agency for railways on aspects related to interoperability legislation. MOVE also informed that the study on clearance gauge commissioned by DG MOVE had been uploaded to DG MOVE's website.

Invited experts provided examples of concrete problems of access to railway infrastructure that this act is trying to address and explained what in practice would be the added value of the act for railway undertakings. Experience of shippers shows that if the existing structure gauge was used to its maximum, much more freight could be transported by rail, but often the infrastructure managers apply overly cautious safety margins preventing loads exceeding the standard volume from being transported by rail. It was explained that by measuring the gauge of a line between Luxemburg and Spain, a long route could be opened for new transport exceeding the standard gauge indicated by the infrastructure manager, resulting in a strong demand of railway undertakings and shippers to transport freight on this route. Similarly, other routes could be opened to new markets if measured data was used.

Experts also indicated that on one network wagons already used without any problems in the past were later forbidden by the infrastructure manager as they were considered as no longer matching UIC gauge.

Regulatory bodies had a couple of questions on the draft implementing act and its implications and concrete suggestions for improving the drafting (e.g. there may be a need to clarify who would be liable for accuracy of data measured by an entity other than the IM; deadline of 10 days to provide information on measured data might be too short if measuring still needs to be carried out; regulators feel capable to assess completeness of data but are not sure whether they could also assess accuracy of data). Some regulatory bodies had reservations as regards the legal basis chosen by the Commission; MOVE explained the rationale, i.e. that regulatory bodies would be under an obligation to check information on the nature of the infrastructure published either in the network statement or in the register of

infrastructure, so the topic would fall within the competence of regulatory bodies. Moreover, it would be an important supplement to interoperability legislation, which does not contain comparable enforcement mechanisms at this stage.

It was concluded that MOVE would look at comments/drafting suggestions provided by regulatory bodies (including comments submitted in writing by the end of April) and would continue consultations on this draft text by sharing it with other stakeholders, such as Member States representatives in the coming weeks.

Discussion on definitions of service facilities

MOVE introduced the topic, explaining that in the context of data collection for the purpose of the 5th RMMS report it became clear that countries often do not seem to have a common understanding of the type of installations covered by Annex II point of the Directive (= service facilities). In order to get meaningful and comparable data on service facilities it therefore seems necessary to provide some guidance to explain some of the terms used in the Directive and in the Commission Implementing Regulation (EU) 2015/1100. MOVE considers regulatory bodies, who are also performing market monitoring activities at national as well as European level, to be best placed to provide first input on the understanding of the terms used in the Directive/the RMMS questionnaire in the respective countries. This input should serve as basis for developing guidance for upcoming RMMS reporting exercises. Prior to the meeting, MOVE had gathered written input from regulatory bodies, which provided the basis for the discussion.

Main issues discussed included the question on how to treat multi-purpose facilities for statistical purposes (e.g. count them as one or several facilities); the fact that some MS do not take into account privately owned facilities; the problem that some countries only provide information on marshalling yards with gravity hills, while others report all kinds of marshalling yards; the significant divergences between Member States in transposing the term 'relief facilities'.

Many regulatory bodies suggested that for the purpose of market monitoring one should mainly categorise facilities according to their functionalities for users and not according to their technical equipment.

Regulatory bodies were invited to provide any additional feedback on the topics discussed by 24 April.

Roundtable discussion: recent developments in Member States (relevant cases, changes to organisational set-up)

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

Presentation by a regulatory body on revision of the track access charging scheme

One regulatory body reported about its assessment of an infrastructure manager's proposal for a revised track access charging scheme, implementing the requirements of Directive 2012/34/EU as regards mark-ups as well as direct cost calculation.

The revision of the charging scheme was a long and complex process, with several rounds of market consultations; the regulatory body was involved in the process of revision from a very early stage. A series of meetings between regulatory body and infrastructure manager took place to accompany the process of the revision of the track access charging scheme.

The calculation of direct cost was carried out per market segment; charging parameters chosen were a combination of train km and tonne km. As regards market segmentation, the regulatory body requested the infrastructure manager to apply a more detailed segmentation than the one initially proposed by the infrastructure manager. Elasticities to assess the ability of market segments to pay mark ups were calculated according to the Ramsey Boiteux model. The regulatory body also asked the infrastructure manager to develop a new performance scheme.

Regulatory bodies had a number of specific questions concerning the assessment carried out by that regulatory body and its findings (e.g. how to assess the ability of the market to pay mark ups for segments with few competitors; reasons for defining certain segments, e.g. for not having a specific market segment for empty train runs). The regulatory body concerned provided clarifications on the specific questions.

Presentation by a regulatory body on revision of the track access charging scheme

A second regulatory body also reported about its assessment of an infrastructure manager's proposal for a revised track access charging scheme, implementing the requirements of Directive 2012/34/EU as regards mark-ups as well as direct cost calculation.

The process of assessing the infrastructure manager's charging scheme was launched 6 years ago; in 2016, the regulatory body requested the infrastructure manager to perform a complete review of its charging scheme within 2 years in view of ensuring compliance with the requirements of Directive 2012/34/EU.

Challenges encountered include budgetary constraints of the infrastructure manager, complexity of the method for calculating charges applied by the infrastructure manager (econometric model), choice of charging units not reflecting cost causation, subsidies granted to certain market segments, market segmentation and determination of level of mark-ups.

While the infrastructure manager has already addressed some points of concern to the regulatory body, a series of elements need to be redesigned in order to ensure compliance of the charging system with EU law.

Fellow regulatory bodies asked a number of questions on findings of the regulatory body as well as the scope of its powers concerning charging. The regulatory body concerned provided clarifications on the specific questions.

Discussion on a non-paper on long term cost based charges

MOVE has received a request to provide guidance on the scope of application of the provisions concerning long term cost based charging (Article 32(3) of Directive 2012/34/EU) and has developed a first draft paper providing a number of elements on how to apply the provision. This draft was in a first step shared with regulatory bodies earlier this year in order

to gather their feedback. Several regulatory bodies have provided feedback in writing. The meeting provided a possibility to discuss comments of regulatory bodies and to clarify certain elements of the paper.

Main topics discussed covered the relation between the provisions on direct cost based charging, mark ups and long term cost based charges; the need to reconcile the objective of optimum effective use of infrastructure with the expectations of investors to recoup as much of their investment as possible; the type of costs that can be covered by long term cost based charging components; and the type of projects that could be subject to long term cost based charging.

MOVE suggested circulating an updated version of the paper to regulatory bodies in early April, allowing them to provide further comments by 6 May. It would then be decided how to take the work on this paper forward.

Discussion on economic equilibrium test

MOVE introduced the topic, explaining that the governance Directive of the fourth railway package would require the Commission to adopt an implementing act specifying how to apply the economic equilibrium test to domestic passenger services by the end of 2018. As regulatory bodies are the entities in charge of performing economic equilibrium tests, MOVE would like to start work on this act by collecting feedback from regulatory bodies concerning the application of the already existing implementing act for international services. Prior to the meeting MOVE has collected input from regulatory bodies, which served as a basis for the discussion on a number of questions relating to the potential content of the new draft implementing act.

The discussion showed that so far only some regulatory bodies have experience in applying the economic equilibrium test, as a number of Member States has decided to grant unlimited access for international passenger services.

Aspects discussed included topics such as deadlines for regulatory bodies to take a decision on the economic equilibrium test, scope of entities entitled to perform an economic equilibrium test, timeframe for reconsideration of decisions, application of rules on economic equilibrium test in case of PSO contracts with exclusive rights and application of rules to standard vs. high speed lines.

Several regulatory bodies showed interest in participating in a dedicated meeting to discuss a first draft text later this year.

Update of Commission on implementing and delegated acts (Annex VII, service facilities)

MOVE provided an update on the state of play of discussions on the draft implementing act on access to service facilities (stakeholder workshop on revised draft with > 70 participants held on 10 February 2017; second workshop on revised text planned for 3 May 2017) as well as the delegated act on amendments to Annex VII concerning timetabling (ongoing public consultation until 14 April; all regulatory bodies are invited to take part in this consultation). MOVE's objective for both acts is adoption in the second half of 2017.

Report of IRG-Rail

IRG Rail provided a short update of its recent activities. The French regulatory body has the Presidency of IRG Rail in 2017. Ongoing work is being carried out on performance schemes, KPIs for rail freight corridors, an update of the overview of charging schemes and input to ongoing Commission initiatives (such as e.g. economic equilibrium test).

A.O.B.

The joint annual meeting between RNE and regulatory bodies will take place on 6 April in Vienna.

A second workshop with stakeholders on access to service facilities is planned for 3 May 2017.

4. Next meeting

The next ENRRB meeting will take place on 20 and 21 June in Barcelona hosted by the Spanish Commission for markets and competition.

5. List of participants

Rail Regulatory Bodies from 25 Member States and 3 observers were present at this meeting chaired by the Commission.

Two external experts attended for the discussion on clearance gauge.

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)
CH (Observer)	Railways Arbitration Commission (RACO)
CZ	Rail Authority
DE	Federal Network Agency (Bundesnetzagentur)
DK	Danish Rail Regulatory Body (Jernbanenaevnet)
EE	Estonian Competition Authority
EL	Greek Regulatory Authority for Railways
FI	Finnish Transport Safety Agency (TRAFI)
FR	Authority for Regulation of Road and Rail (ARAFER)
HR	Croatian Regulatory Authority for Network Industries (HAKOM)
HU	National Transport Authority

IT	Authority for Transport Regulation (ART)
LT	Communications Regulatory Authority of Lithuania
LU	Institut Luxembourgeois de Régulation
LV	State Railway Administration
MK (Observer)	Railway Regulatory Agency (RRA)
NL	Authority for Consumers & Markets (ACM)
NO (Observer)	Norwegian Railway Authority
PL	Polish Office of Rail Transport (UTK)
PT	Authority for Mobility and Transport (AMT)
RO	Romanian Competition Council - Railway Supervision Council (RCC)
SE	Swedish Transport Agency
SL	Agency for Communication Networks and Services (AKOS)
SK	Transport Authority (Dopravný úrad)
SP	National Commission for markets and competition (CNMC)
UK	Office of Rail and Road (ORR)