

## **Summary report – 7<sup>th</sup> ENRRB meeting**

The 7<sup>th</sup> meeting of the European network of rail regulatory bodies took place on 18 and 19 March 2015 in Athens. Regulatory bodies from 23 Member States and 2 observers were present.

### **Roundtable on regulatory bodies' decision-making practice**

Regulatory bodies informed each other about ongoing investigations and important decisions taken since the 6<sup>th</sup> ENRRB meeting held in November 2014 in Brussels as well as recent market developments and the state of play of the transposition of Directive 2012/34/EU.

### **Information on the state of play of implementing measures**

DG MOVE informed about the state of play of implementing acts under Directive 2012/34/EU, including an overview of the acts adopted so far (implementing regulations on new rail passenger services, certain aspects of the procedure of licensing, criteria for applicants and charging for the cost of noise-effects) and the envisaged timing for adoption of the upcoming implementing acts (RMMS reporting obligations, modalities for calculation of direct cost, procedures and criteria for framework agreements and ETCS modulation).

### **Discussion on the 4<sup>th</sup> Railway Package**

DG MOVE provided an update about that state of play concerning the 4<sup>th</sup> railway package, including an overview of the main elements of the compromise texts proposed by the LV Presidency on the market pillar. Some regulators indicated that if they were to be entrusted with additional tasks as envisaged in the LV Presidency compromise, they might need additional resources in order to perform these tasks. Beyond that, regulators underlined that rules of the governance Directive and PSO Regulation would need to be very clear in order to allow proper enforcement.

### **Presentation by a regulatory body on the draft railway law (recast implementation)**

One regulatory body presented the new national railway law which will bring new rules on access to service facilities and rail related services, a review of the charging system to follow the principles of the directive (i.e. direct cost + mark ups) and a pre-approval of charges by the regulatory body. The regulatory body expressed concerns about the fact that according to the draft law the ability to bear mark-ups of regional PSO-operators would depend on the PSO compensation paid by the competent authorities; other market segments such as freight or long-distance passenger market would have to compensate for the limited ability of PSO-operated to pay mark-ups and would probably have to pay higher track access charges.

### **Presentation by a regulatory body on a set of regulatory measures**

One regulatory body presented decisions prescribing a number of regulatory measures to be complied with by the infrastructure manager. The measures prescribed include, among others, an obligation of the infrastructure manager to publish the available capacity for each line segment per hour and indicate which capacity is available for framework agreements, criteria

for determining track access charges for high speed trains, the obligation to revise the performance regime following a consultation with stakeholders as well as a requirement to publish information on principles of contracts between infrastructure managers and railway undertakings and to inform the regulator of any change to existing contracts. As the infrastructure manager could not provide evidence of the implementation of some of the measures by the end of the deadline set by the regulator, enforcement procedures have been launched.

### **Information on state of play on development of a database for exchange of information between regulatory bodies**

DG MOVE informed regulatory bodies that it was working on the development of a database to facilitate the exchange of information among regulatory bodies. Access to this database will be limited to regulatory bodies. The objective is to collect decisions of regulatory bodies in this database in a structured manner, which should make it easier to find information on similar cases dealt with by other regulatory bodies. Moreover, the database should allow to request input from other regulators on ongoing cases and to exchange information on cases concerning international train services in a secure way. Most regulators welcomed this initiative.

### **Update by the Commission on rail freight corridors (based on questions submitted by a regulatory body)**

DG MOVE provided an overview of the existing legal framework of the corridor regulation and Directive 2012/34/EU, which give regulatory bodies comprehensive powers to address problems of discriminatory treatment concerning access to rail freight corridors. DG MOVE acknowledged that some provisions of the corridor regulation might require further clarification and invited regulators to indicate obstacles identified in applying/implementing/enforcing the existing legislative framework in view of a possible revision of the rail freight corridor regulation.

### **Presentation by a regulatory body on decisions of an appeal Court concerning charges for the use of infrastructure**

One regulatory body informed that the competent Court of appeal had concluded that a bonus/malus system applied by the IM for infrastructure friendly motive power would either have to be considered as relating to cost directly incurred by a train service or as an incentive to stimulate the use of infrastructure motive power. In order to assess whether it could be an incentive, the regulator would need to assess whether the bonus/malus system applied by the infrastructure manager actually stimulated the use of infrastructure friendly motive power. The regulator is re-assessing the case in the light of the findings of the appeal Court.

On a case concerning station fees and a mark-up for long distance passenger trains, the appeal Court confirmed that the infrastructure manager would be under an obligation to provide the regulatory body with all relevant information necessary to verify how the charges are calculated to assess whether they correspond to the costs.

## **Presentation by a regulatory body on incentive mechanisms to limit the modification and cancellation of allocated paths**

One regulatory body reported about operators complaining about being allocated paths that do not match their demands, frequent modifications/cancellations of paths without the RU's consent as well as the late release of capacities blocked for maintenance works. These circumstances led to many ad-hoc requests for train paths. As the IM did not have any record of the allocation process, it was difficult for the regulator to monitor the situation. The regulator therefore requested the infrastructure manager to monitor its path allocation process and to improve the maintenance planning, including the use of cancellation/modification charges as incentives to remedy the situation.

## **Discussion on access to service facilities**

IRG Rail presented the core elements of its second position paper on access to service facilities to be adopted in April 2015. DG MOVE informed that first discussions in view of the upcoming implementing act on service facilities had been held with infrastructure managers and operators of service facilities. However, the timing for this implementing act was linked to the progress on the market pillar of the fourth railway package, as Article 13 makes reference to Article 7 of the Directive, which is currently being discussed in Council.

## **Discussion on topics for joint meeting ENRRB-PRIME**

DG MOVE provided an overview of the topics collected from regulators and infrastructure managers for a joint meeting between PRIME and ENRRB. There was no intention to create an additional permanent working group, but to organise meetings to share experience and information on specific topics, as deemed necessary; it was envisaged to hold a first meeting during the second half of 2015. DG MOVE would coordinate the preparation of the meeting and inform ENRRB-Members about the date and a draft agenda at the next ENRRB meeting in July.

## **Report of IRG Rail**

The Chair of IRG Rail made a report on IRG's activities since the last ENRRB meeting as well as future objectives. The upcoming market monitoring report of IRG Rail will be published in April.

## **AOB**

DG MOVE informed about the upcoming publication of a report on cooperation between regulatory bodies requested under Directive 2012/34/EU.

The 8th meeting of ENRRB is scheduled to take place 1 and 2 July 2015 in Krakow.