

20th meeting of the European Network of Rail Regulatory Bodies

Brussels, 21 January 2021

DRAFT MINUTES

21 January 2021

1. Approval of the agenda

The agenda was approved.

2. Approval of the minutes of the 19th ENRRB meeting

The minutes were approved.

3. 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 related services in terminals situated in ports

1) Presentation by BNetzA of the ruling from the Higher Administrative Court of Northrhine-Westfalia

Please see presentation.

2) Presentation by the Finnish Rail Regulatory Body

Please see presentation.

3) DG MOVE's position and further discussion

It would appear that throughout the Union, there are various legal regimes used by either rail infrastructure managers or port authorities in relation to the infrastructure concerned, in particular with regard to infrastructure charges. These authorities usually conform to the rules of the Regulation (EU) 2017/352 ('Regulation') or Directive 2012/34/EU Directive.

For instance, in the port of Hamburg time-based port charges covering all handling operations are paid by shippers to the port authority on the basis of commercial agreements. The port authority is also responsible for allocating paths/slots to trains which need to reach the handling facilities located within the port perimeter.

On the other hand, in the port of Antwerp, it is the main infrastructure manager that carries out the allocation of train paths within the port area, and charges railway undertakings according to the provisions of the Directive.

Applicable legal framework:

To identify the applicable legal framework it is necessary to establish what relation exists between the rules of the Regulation and the Directive. The scope of the Regulation is restricted principally to ports on the TEN-T network. The list of port services under Article 1(2) principally does not overlap with the list of (rail related) services in Annex II of the Directive. The Regulation refers to general access routes to the processing of passengers and cargo that could include inland waterways, road or rail, while the Directive specifically provides provisions on rail infrastructure. Annex II, point 2 of the Directive specifically mentions that rail related infrastructure situated in maritime and inland ports is subject to the rules on access to services and service facilities. The Directive therefore clearly aims to subject such infrastructure to its rules.

The Directive appears to be more targeted and could therefore constitute a *lex specialis* towards the rules of the Regulation. The provisions of the Regulation would continue to apply along with the rules of the Directive. It is only in case of conflict between the rules of the Regulation and those of the Directive that the Directive would take precedence.

Pure rail-related facilities such as shunting yards (where trains are broken down and attached to smaller locomotives which bring them to designated port areas for handling) would be entirely subject to the Directive.

Charging:

It remains to be clarified.

Path allocation:

The Regulation does not foresee any provision as regards path/slot allocation for trains within a port, whereas the Directive regulates extensively the allocation of train paths on the rail network.

5. Presentation by UPDI of case C-453/20 – freight platforms

Please see the presentation.

6. Presentation by IRG-Rail on the interpretation of articles 32 and 33 of the Directive 2012/34/EU and on the notion of “rate of return”,

Please see the presentation.

7. Presentation by CNMC of the role of regulatory bodies in the market can bear test of access charges given the situation created by COVID-19

Please see the presentation.

8. Redesign of the International Timetabling Process (TTR)

1) Presentation by IRG-Rail of its report on TTR

Please see the presentation.

➤ DG MOVE's position and further discussion

A full implementation of TTR will entail changes to the existing legal framework as the necessary update of timetabling and allocation procedures goes beyond current practices as described in the legal framework. The legal framework shall never become a barrier to new developments and promising sector initiatives.

The Commission has been performing an evaluation of Regulation (EU) 913/2010 which looks at the functioning of the rail freight corridors. The regulation touches upon areas related to TTR, in particular there are some specific aspects of the regulation like the capacity dedicated to rail freight along the corridors as well as the coordination of works and the coordination of traffic management.

The evaluation of the regulation will be followed by an inception impact assessment. The impact assessment will analyse different options to improve the legal framework. These options will be presented and discussed with stakeholders – as well publicly consulted.

We are aware that there will be a transitional period until any new framework is in place, while TTR developments proceed.

In view of a closer exchange with the Member States on the developments of TTR (the results of the TTR pilots are available soon), the Commission has proposed to organise meetings in a small format, at selected times and convened, if deemed necessary. The meetings will aim at exchanging information and debate on TTR developments, on legal questions or questions that arise due to the transitional phase.

9. A.O.B

End of the meeting

**20TH MEETING OF THE
EUROPEAN NETWORK OF RAIL REGULATORY BODIES (ENRRB)
VIDEOCONFERENCE, 21 JANUARY 2021**

AT	Schiene-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