

## **Summary report – 6<sup>th</sup> ENRRB meeting**

The 6<sup>th</sup> meeting of the European network of rail regulatory bodies took place on 10 and 11 November 2014 in Brussels. Regulatory bodies from 22 Member States and 3 observers were present.

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

Regulatory bodies informed each other about ongoing investigations and important decisions taken since the 5<sup>th</sup> ENRRB meeting held in July 2014 in Bonn as well as recent market developments and the state of play of preparatory works for the transposition of the recast.

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

DG MOVE provided an update on the state of play of implementing acts under the recast, including the implementing regulations on new rail passenger services and on criteria for applicants adopted at the SERAC meeting in July as well as the planned resubmission of the implementing act on licensing of railway undertakings for vote at the upcoming SERAC meeting in December. DG MOVE also informed ENRRB Members about the results of subgroup meetings on the implementing acts on calculation of direct costs and on framework agreements, the content of the implementing act on noise-differentiated track access charges as well as the preliminary findings of the impact assessment concerning ETCS differentiated track access charges.

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

DG MOVE provided an update on the state of play of the fourth railway package, including the results of the orientation debate held at TTE Council in October 2014. The IT Presidency had the intention to submit a progress report on the governance directive and PSO Regulation as well as a general approach on the proposal to repeal the regulation on normalisation of accounts at TTE Council in December 2014.

### **Update on rail freight corridors and the role of regulatory bodies**

DG MOVE gave a presentation on recent developments concerning rail freight corridors, including the drafting of a common framework for capacity allocation by RFC 1 and 2 and invited regulatory bodies to closely follow these developments. The plans to introduce new NetPap and Flex-Pap priority rules were discussed and some regulators expressed concerns about these concepts.

### **Presentation of a regulatory body concerning transmission of traction current from third parties**

One regulator presented its findings concerning a new charging model for use of the electric supply equipment in case of the provision of traction current by an electricity provider other than the infrastructure manager. One of the questions to be addressed was whether the costs for transforming the traction current should be borne solely by those railway undertakings using traction current that needs to be transformed (i.e. traction current provided by providers

other than the infrastructure manager) or by all users. Another important aspect included the necessary modification of the network statement in order to ensure a separate publication of prices for traction current and use of electrical supply equipment.

### **Presentation of a regulatory body on a charging review**

One regulatory body, which is periodically reviewing the track access charging schemes of infrastructure managers, presented its related findings concerning one private infrastructure manager holding a concession to manage specialised infrastructure.

### **Update on RMMS**

DG MOVE presented the state of play as regards the preparation of the RMMS implementing act and regulatory bodies provided feedback on a number of aspects on the basis of their experience in market monitoring, including the need for clear definitions and challenges in collecting data on service facilities where these are owned by many different private undertakings.

### **Presentation of a regulatory body on the role of regulatory bodies with regard to PSO tendering procedures**

One regulatory body indicated that while not having specific powers to supervise PSO tendering procedures, a bidder turned to the regulatory body as the station operator did not provide the relevant information concerning charges for use of stations, which made it impossible to calculate the bid for the tender procedure.

Questions discussed concerned the difficulty to ensure a level playing field for competitors in tender procedures if one of the competitors is in a position to use the reasonable profit gained from the execution of another PSO contract or revenues from other commercial activities (e.g. revenues from the operation of stations) to fund other activities, such as new PSO services. DG MOVE acknowledged the difficulty but underlined that the rules on accounting separation would apply to each contract, i.e. there should not be any possibility for an operator to use funds from one PSO-contract to compete for other PSO-contracts. Moreover, in accordance with the PSO regulation, an unsuccessful bidder may seek legal review concerning the PSO-award procedure under an effective and quick procedure.

### **Presentation of a regulatory body on charging for access to service facilities**

One regulatory body presented the results of two assessments carried out on the charging principles applied by the infrastructure manager for access to service facilities and the supply of rail related services. One of the main challenges encountered was the determination of the reasonable rate of return; other regulatory bodies shared their experience in addressing this question.

DG MOVE explained that in future the new rules of the recast, which allow setting charges at full cost plus reasonable profit would need to be taken into account. The question of how to determine the reasonable profit will need to be looked into more in depth in the future.

## **Presentation of a regulatory body on a new railway law including changes to competences and powers of the regulatory body**

One regulatory body presented the new national railway law which will give the regulator new powers to control charges for service facilities and to ensure the independence of the infrastructure manager as from January 2015. As far as the organisational structure of the regulatory body is concerned, a new sanction committee responsible for issuing any kind of sanctions should be set up within the regulator, but independent from its boards.

## **Discussion on RB organisation, resources and functions**

DG MOVE provided an overview of the provisions of Directive 2012/34/EU concerning new tasks for regulatory bodies and the obligation of Member States to provide appropriate staffing. DG MOVE underlined that the new provisions would require regulatory bodies to act upon own initiative on a number of issues, and expressed concerns that the current staffing of some regulatory bodies might not allow them to appropriately perform all tasks listed in the Directive. A number of regulatory bodies indicated that indeed they would need additional resources to fulfil all tasks; while some Member States were aware that new tasks would require new resources, other Member States did not seem to be open to granting regulatory bodies additional resources. DG MOVE indicated to also discuss the question of resources of regulatory bodies with Member States when looking into the recast transposition.

## **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. COM welcomed the work of IRG Rail and invited IRG Rail to strengthen exchange with COM, in particular in the area of market monitoring.

## **AOB**

The next meeting of ENRRB is scheduled to take place in March 2015 in Athens.