
26th Meeting of Rail and Intermodal Working Group

*Location: Hotel Tirana International, Tirana
March 2-3rd, 2017*

Plenary session summary

Rail market access legislative acts have been consolidated and are available on EC website. Consolidated versions are being prepared for PSO legislative acts and are expected to be published in the forthcoming period.

4th Railway Package has been adopted and main components of the regulatory framework are:

- Opening markets to competition
- Independence of the infrastructure manager from railway undertakings
- Transparency of financial flows/accounting separation
- Non-discriminatory and affordable track access charges
- Transparent and non-discriminatory capacity allocation process
- Access to service facilities
- Independent rail regulatory bodies with appropriate competences & resources
- Competitive tendering of public service contracts

Independence of the infrastructure manager from railway undertakings:

According to the 4th package IM has three choice to respect the independence requirements:

- Full separation between IM and RU (unbundling)
- Holding with IM and RU subsidiaries (separate legal entities)
- Fully integrated company with independent body for essential functions

Further requirements have been prescribed for integrated structures and they include: Prohibition of certain double mandates; Full independence on essential functions (IM or charging and allocation body); IM has to be a separate legal entity or independent charging and allocation body; Rules on IM bonuses, protection of sensitive info handled by IM and no conflicts of interest.

Additional requirements have been set for traffic management and maintenance planning: Impartiality, transparency, non-discrimination for RUs; Access to relevant information on traffic management in cases of disruption; Consultation on long term planning of maintenance and renewal, need to take into account concerns expressed; Non-discriminatory scheduling of maintenance works and no conflicts of interest.

Transparency of financial flows/accounting separation

Integrated undertakings have to abide by special requirements in order to ensure transparency such as: IM to use its income from network management activities only to finance its own business; No loans between IM and railway undertakings; Other loans in integrated structures can be given only at market prices under regulatory supervision; Separate servicing of debt of IM and RU; Rules on pricing of intra-group services (market price or cost of production + reasonable profit).

Non-discriminatory and affordable track access charges

As a basic principle: charges for minimum access package to be set at cost directly incurred by train service ('direct cost'). Mark ups up to full cost can be set only if market can bear it. Application of mark-ups requires market segmentation and market can bear test (exception: traffic from/to third countries on 1520 network).

Directive provides additional provisions for charges for access to service facilities and rail related services, long term cost based projects, noise differentiated charges, discounts, reservation charges, performance scheme, etc. Additionally specific provision for transport from/to third countries on 1520 network and transit traffic have been included.

Rules of calculation of direct cost-Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the costs directly incurred as a result of operating the train service defines non-eligible costs and method for calculating charges.

IM has max 4 years to align charges, applicable since 1 August 2015. IM have to notify RB of method by 3 July 2017. In order to ensure this is respected, RB to monitor charges ex-post and/or ex-ante on its own initiative

Transparent and non-discriminatory capacity allocation process

Commission implementing Regulation (EU) 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements regulates this area.

Provisions include non-discriminatory access to infrastructure for all railway undertakings licensed in the EU. Prohibition to conclude framework agreements that would preclude the use of infrastructure by other applicants. No 'grandfather rights'; coordination of conflicting requests for capacity.

Access to service facilities

Access to service facilities does not include only terminals but also the following facilities: Passenger stations; Freight terminals; Marshalling yards and train formation facilities, storage sidings; Maritime and inland port facilities linked to rail activities; Maintenance facilities; Cleaning and washing facilities; Refuelling facilities.

Independent rail regulatory bodies with appropriate competences & resources

One regulatory body to be established per Member State with competences to act upon complaints and with possibility to act on their own initiative with the main objective to ensure fair competition & non-discrimination. Furthermore, Regulatory bodies should be independent stand-alone authorities with appropriate resources. Regulatory bodies should have competences to take remedial measures and impose fines.

Core competences include: Verification of network statement, track access and facility charges; Monitoring of capacity allocation process and access to service facilities; Market monitoring/consultation and audits of accounts of IMs, RUs, SFOs. Additional competences encompass renewal planning, scheduled and unscheduled maintenance, traffic management, compliance with independence requirements for infrastructure managers, compliance with financial transparency rules (intra-group loans and services, etc.)

Impact assessment can be used to decide on the specific issue of a Directive, e.g. structure of the Regulatory Board (standalone or joint), however it cannot be used to bypass compulsory rules. In order to avoid too much bureaucratic work, State can decide to avoid doing Impact assessment or should restrict doing this to only major issues and problems.

Competitive tendering of public service contracts

Experience with competitive tendering shows that it generally allows competent authorities to get better value for money. Fourth railway package introduces principle of competitive award of public service contracts. However there are exemptions to the principle, which relate to existing exemptions (De minimis, emergency, in-house) and "Performance based" exemption like (a) specific characteristics of the network or the rail market (e.g. complexity, techn./geograph. isolation) and b) improvement of performance (quality of service or cost-efficiency))

Addressing the Challenge of Redesigning a Charging System

DB Netze, German infrastructure manager, developed a new infrastructure charging concept based on EU legislation. Main points have been presented in the study and are briefly described in the following paragraphs.

Three basic elements include the following:

- Costs directly incurred as a result of operating the train service (marginal costs)
 - Each customer has to bear the costs which he directly causes
- Mark-up to cover full costs according to the ability to pay of the market segment
 - Remaining costs are divided among all users to maximise market demand
 - The level of the mark-up it is based on the ability to pay of the market segment and shall not exclude the use of infrastructure by market segments
 - Necessary to secure sufficient funds to finance the infrastructure
- Further elements (incentive components of behaviour control)
 - Additional charges defined by the law reflecting e.g. the costs of environmental effects, scarcity of capacity, investments...

Segmentation has been done per the type of traffic which then was divided to further segments as follows:

- ***Segments in long-distance passenger traffic are based on three segmentation criteria***
 - Train connects metropolitan railway stations
 - Train does not connect metropolitan railway stations
 - Further segments

Train Speed based charges in the first two passenger market segments.

- ***Segmentation of freight traffic based on the nature of the traffic***
 - Loco train → Advance performance of a load drive
 - Conventional train → Train without dangerous goods, no heavy train
 - Local freight train → Train journey shorter than 75km AND train shorter than 370m
 - Local freight train carrying dangerous goods → Train with dangerous goods AND journey shorter than 75km AND train shorter than 370 m
 - Train carrying dangerous goods
 - Very heavy train → Train weight > 3.000 t
- ***Differentiation of segments into sub-segments has been carried out in freight traffic***
 - Time flexibility time flexibility of end customers regarding path construction
 - Spatial flexibility spatial flexibility of end customers regarding path construction
 - Priority in dispatching
 - Express Top Priority w.r.t. all trains (except „passenger long distance-Express“)
 - Fast Top priority w.r.t. to all freight trains (except other freight –Express/Fast trains)
- ***Segments in local/suburban passenger transport had to be adapted to new national legislation – states as market segments***
 - States as market segments in local passenger transport
 - Determination of average charges for load and empty runs per state according to legal requirements of § 37 ERegG

Schedule for capacity allocation Reviewing Annex VII

Several EU legal acts on timetabling exist:

- Decision of Executive Boards of Rail Freight Corridors on the framework for capacity allocation on the rail freight corridor of 27 October 2015 ("RFC-FCA")
- Directive 2012/34/EU on a Single European Rail Freight Area ("Directive")
- Regulation (EU) No 454/2011 as last amended on the TSI for the telematics applications for passenger service ("TAP-TSI")

These legislative acts should address some of the main problems with scheduling such as users not being consulted on major capacity restrictions and users not being informed about restrictions when requesting capacity under the annual timetabling; poor coordination between IMs and between IMs and facility operators etc.

Main objectives of scheduling are optimum effective use of the available infrastructure without any discrimination. Synchronisation of different, independent infrastructure managers and service facilities in order to meet the changing needs of the market.

In order to bypass issues with the capacity restrictions information on beginning and planned end of the works should be provided to the RUs, more specifically :

- 18 months in advance (Class I): Number of train paths affected by the restriction -
- 7 months (Classes II and III): modified train paths
- Section(s) of line affected by the restriction
- Diversionary lines (if applicable)
- Duration of the restriction

Class	Planned duration	Trains affected	Coordination with IMS and information of RU
I	> 1 week	> 40 %	> 18 months
II	> 3 days	> 20%	> 9 months
III	> 1 day	> 10%	> 6 months

Topics for Presentations at the next meeting of the SEETO Railway Working Group

Regulatory body requesting a preliminary decision by the EU Court of Justice. Present on independence criteria applied by the EU Court of Justice.

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SEETO Railway Working Group with regional logistics industry -summary

Industry representative emphasised the need for high service levels, reliability, quality, security and punctuality. To ensure sustainable transport, development of intermodal service is required, which includes both trucking and railway. Truck and rail have to be complementary to each other and in service of sustainability of transport and development of economy of one country.

Conditions of access to service facilities

Several discussion points have been summed up in the following paragraphs while detailed presentation on the conditions of access to service facilities (Art. 13 of Directive 2012/34/EU given by the Mr. Uhl, is available together with the corresponding document on SEETO website¹.

Regulatory body has to be constantly active in service facilities, since some of the cases can be hard to detect e.g. terminal operator also owns a rail RU, and then it gives discount to the RU or prioritizes its own RU within time planning activities and in this way distorts the market.

Service facilities, according to the new article in recast, have to publish access prices and have an obligation to publish service facility statement. In the case that party is interested in crane usage of the terminal that is closed and has not been used for some time, the interested party can call the owner and ask to lease the crane, if he does not react they can go to the regulator. “use it or lease it rule”. Regulator can issue a decision and instruct the owner to lease the crane.

Market access from user point of view

Mr. Xhevat Ramosaj deputy CEO of INFRAKOS gave a presentation on market access, which is available on SEETO website. One of the main points that he made was that sea ports have the right to establish their Railway Undertakings in order to transport freight.

This presents normal practice in EU and has many benefits to ports and to customers, such as higher profit for ports (increasing freight, control over the multimodal transport chain) and development of the market competitiveness and market opening, final customer dealing with only one authority.

¹ <http://www.seetoint.org/library/meetings/wg/>

He also mentioned certain obstacles (like pressure from existing state owned RUs, which have monopoly on railway transport and missing experience from port side) but emphasised that seaports, if decide to pursue this endeavor can be supported by rail Infrastructure Managers in certain aspects (Timetabling process; Organization and implementation of the train paths; Drafting of the simplified Network Statement for port service facilities; Maintenance of the railway network inside the port etc.).