

Overview of the year 2021

Developments on the Austrian railway market

2021 was marked by the recovery of the rail sector following the decline caused by the effects of the COVID-19 pandemic. The key performance indicators for rail passenger transport rose again, thus continuing the growth trend of the years prior to 2020. There was also a marked upturn in rail freight, with single-digit growth recorded in both volume and transport performance. Competition has increased in all three areas.

The number of passenger-kilometres travelled rose by some 15 percent, primarily due to the increase in passenger numbers. Following the gradual return to and targeted expansion of the regular timetable, the range of mobility services provided was greater than ever before. After being suspended for lengthy periods during 2020, long-distance travel increased by 18 percent, thus slightly increasing the average distance travelled in 2021.

The net ton-kilometres and gross ton-kilometres travelled in the rail freight sector and the net tonnage transported all saw growth at the upper end of the single figure range. Rail Cargo Austria and its competitors again reported higher figures, although greater gains were achieved by railway undertakings outside the ÖBB group. This meant that its market share in all three segments increased by several percent, reaching almost 40 percent (volume) and around 37 percent (transport performance) respectively.

At the end of 2021, there were 81 railway undertakings in Austria. The foreign rail freight undertakings BLS Cargo, BSAS, Captrain Deutschland CargoWest, RheinCargo, Rund ums Gleis and Ten Rail have all entered the market since 2020. However, the safety authorisations of Transalpin Eisenbahn and CER were not renewed once they had expired. In all, 62 companies were authorised to run trains on ÖBB tracks. These included four undertakings in the ÖBB group and eleven undertakings in which foreign incumbents had direct or indirect holdings (dominant undertakings). The private sector continued its exponential growth, with the number of undertakings rising to 36 in 2021. Lastly, majority stakes in eleven undertakings were held by public institutions.

Developments on the European market

April 2022 saw the publication of the tenth market report by the Independent Regulators' Group-Rail (IRG-Rail), which focuses on general developments in European rail transport during 2020. A total of 31 countries provided statistical analyses for this purpose. The report focuses on a study of the effects of COVID-19 on the rail sector during the first year of the pandemic and outlines the most important measures taken by each European country to deal with this exceptional situation.

Despite the decline in passenger transport, 2020 again saw Austria lead the European Union in terms of railway use. With 832 rail kilometres per inhabitant, Austria secured first place ahead of France (829 kilometres) and Sweden (783 kilometres).

Amendments to the law

The BGBl (Federal Law Gazette) I 2021/231 presented amendments to the Railway Act (EisbG), the Federal Railways Act and the Accident Prevention Act (UUG). These were enacted in response to ongoing breach-of-contract proceedings brought by the European Commission against the Republic of Austria on the grounds that guidelines were implemented incompletely or incorrectly. This has led to changes in the Schienen-Control Kommission's sphere of competence. The amendment came into force on 31 December 2021.

Extension of reference period specified in Regulation (EU) 2020/1429

Since the enactment of Regulation (EU) 2020/1429 establishing measures for a sustainable rail market in view of the COVID-19 outbreak, member states are now able to permit infrastructure operators to discount, waive or defer track access charges. Previously, the reference period specified in the Regulation could only have been extended by a Commission Delegated Regulation, according to which it would have expired on 14 April 2022. Regulation (EU) 2022/312 of 24 February 2022 extended the reference period mentioned in Regulation (EU) 2020/1429 to 30 June 2022.

Key areas of the Schienen-Control Kommission's work

Station fees

In a partial decision passed on 12 January 2021, the Schienen-Control Kommission rejected various applications from a railway undertaking, e.g. to waive the station fees levied by Austria's biggest railway station operator for 2012 to 2015 (legal position governed by Directive 2001/14/EC and RL 91/440/EEC). In 2021, the Schienen-Control Kommission also conducted a competition monitoring procedure relating to the station fees for 2016 to 2020. During this procedure, the Schienen-Control Kommission will decide where the passenger station ends and the services covered by the minimum access package begin.

Last-mile services

The Schienen-Control Kommission is conducting a competition monitoring procedure relating to last-mile services. Any operator of service facilities which moves rolling stock to and from shunting stations and train marshalling yards, including shunting facilities, is obliged to render this additional service for all railway undertakings and refrain from any type of discrimination. During the Schienen-Control Kommission's procedure, the company offering the last-mile services expressed the opinion that these services do not meet the criteria that apply to additional services. This would mean that they are not regulated services and the company is not obliged to submit the contracts to the Schienen-Control Kommission. In a decision dated 27 July 2021, the Schienen-Control Kommission instructed the company to submit its contracts for last-mile services. The company complied with this request.

Traction current

The Schienen-Control Kommission has initiated competition monitoring procedures relating to the published network charges levied for the transmission of traction current in 2021 and 2022. During this procedure, it will be reviewing the tariffs set by the infrastructure operator.

Rolling stock inspection services

The Schienen-Control Kommission conducted a competition monitoring procedure relating to the provision of technical services for rolling stock. One provider's billing model required clients to book an entire service shift (five hours), even if the work were to take less time. The lack of unbundling meant that the model did not comply with the requirements specified by law. The Schienen-Control Kommission then urged the company to adjust its services accordingly. During the course of the competition monitoring procedure, the provider developed an alternative billing model that also allows services to be booked for individual trains. All railway undertakings can now choose between these two billing models.

Access to service facilities

The Schienen-Control Kommission conducted a procedure involving a review of the services offered by a facility operator, which included a rolling stock washing facility and a workshop. A railway undertaking had contacted the Schienen-Control Kommission because it found that the fees charged for these services were too high. The Schienen-Control Kommission identified inconsistencies in the facility operator's calculations, and the operator consequently had to reduce its fees.

Access to siding capacities

One procedure conducted by the Schienen-Control Kommission addressed the topic of access to siding capacities. A railway undertaking had contacted the Schienen-Control Kommission because the sidings it had previously used for its rolling stock had become unavailable due to a reduction in the siding capacities provided by the facility operator. During the procedure, a mutual agreement was reached with the facility operator involving the provision of an alternative siding.

Approval of mark-ups on infrastructure fees

The Schienen-Control Kommission has initiated several procedures relating to the approval of mark-ups on infrastructure fees. As a rule, infrastructure fees for access to the railway infrastructure must be in line with the costs directly incurred when operating the train service. These are regulated in detail in Commission Implementing Regulation (EU) 2015/909, which also uses the term "direct costs". As part of the current procedure, the Schienen-Control Kommission is reviewing the full costs and the costs directly incurred when operating the train service. To this end, the Schienen-Control Kommission has requested information from the infrastructure manager and consulted an official expert. They will be inspecting the infrastructure manager's accounting systems and investigating the full costs and direct costs. The Schienen-Control Kommission is also examining whether the market segments determined by the infrastructure manager are lawful, whether the model used to establish the viability of these market segments is appropriate, and whether this model is used correctly.

Train path conflicts

In one procedure, the Schienen-Control Kommission addressed the issue of train path conflicts in the timetable for 2022. The train paths requested by one railway undertaking conflicted with train path applications of another. The allocation body accordingly implemented a coordination procedure and developed two possible solutions. One of these proposed a modification to the train path applications requested by both railway undertakings, the other a modification to the train paths requested by one undertaking only. The allocation body consequently adopted the first solution. The Schienen-Control Kommission dismissed an appeal by one of the railway undertakings against this decision, since the solution chosen by the allocation body complied with the principles of train path allocation set out in the Railway Act (*Eisenbahngesetz - EisbG*), in particular the principle of freedom from discrimination.

Announcement of new transport services

In 2021, several railway undertakings notified the Schienen-Control Kommission of plans to operate numerous new passenger services. The regulatory body published information about these new transport services on its website.

Review of a speed restriction

One infrastructure manager reduced the maximum speed permitted on some of its branch lines on the grounds that this complied with the requirements set out in the Railway Crossing Regulation (*Eisenbahnkreuzungsverordnung*). Since this is a condition of network access, the Schienen-Control Kommission initiated a competition monitoring procedure to review the factual justification for this restriction.

Reduction of track lengths at one railway station

One railway undertaking notified the Schienen-Control Kommission that its train path application suitable for a long freight train had been refused with effect from autumn of 2021. The application was rejected because the required track length of 642 metres would no longer have been available at one railway station on the single-track line at that time. During the Schienen-Control Kommission's procedure, the infrastructure operator reviewed the project again and was able to approve a reduction to just 633 metres. This length will allow the railway undertaking to add the second traction unit to its freight train at the railway station.

Decisions by the Federal Administrative Court and the Supreme Administrative Court

During 2021, the Federal Administrative Court (*Bundesverwaltungsgericht* - BVwG) and the Supreme Administrative Court (*Verwaltungsgerichtshof* - VwGH) made a number of decisions on procedures initiated by the Schienen-Control Kommission.

In a procedure involving appeals against a decision made by the Schienen-Control Kommission on 10 June 2016 ("traction current procedure 2016"), the BVwG decided to annul certain points in the contested decision and to refer the matter back to the authority so that a new decision could be made.

Moreover, the VwGH ruled that the publication of multiple alternative fee models did not comply with the requirements governing the publication of fees since it would be possible to use each of these variants.

In a ruling passed in 2021, the VwGH declared that an audit relating to train path allocation for the 2019 network timetable had now become redundant since the relevant timetable period had already expired.

In another procedure, the VwGH overturned a decision by the BVwG on a provision in a leasing agreement for a ticket sales outlet which ruled out the possibility of terminating the lease on parts of the area in question. The Schienen-Control Kommission had declared this clause to be invalid, a decision that was confirmed by the BVwG. However, the VwGH stated that the deletion of the clause did not change the legal position, since leases on partial areas can only be terminated on the basis of specific termination provisions.

The BVwG dismissed a complaint of default by a party in a procedure before the Schienen-Control Kommission. The court declared that although the Schienen-Control Kommission had exceeded the time limit for the decision, it was not predominantly at fault.